

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Wednesday, March 13, 2019
Debtors.) 9:30 AM
)

MOTION OF DEBTORS PURSUANT TO
11 U.S.C. SECTIONS 105, 362,
363, 364, 503 AND 507, AND
FED. R. BANKR. P. 2002, 4001,
6003, 6004 AND 9014 FOR
INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTORS TO
OBTAIN SENIOR SECURED,
SUPERPRIORITY, POSTPETITION
FINANCING, (II) GRANTING
LIENS AND SUPERPRIORITY
CLAIMS, (III) MODIFYING THE
AUTOMATIC STAY, (IV)
SCHEDULING FINAL HEARING AND
(V) GRANTING RELATED RELIEF
[23]

MOTION OF DEBTORS PURSUANT TO
11 U.S.C. SECTIONS 105(A),
363(B), AND 507 AND FED. R.
BANKR. P. 6003 AND 6003 FOR
INTERIM AND FINAL AUTHORITY
TO (I) (A) CONTINUE EXISTING
CASH MANAGEMENT SYSTEM, (B)
HONOR CERTAIN PREPETITION
OBLIGATIONS RELATED TO THE
USE THEREOF, (C) CONTINUE
INTERCOMPANY ARRANGEMENTS,
(D) CONTINUE TO HONOR
OBLIGATIONS RELATED TO JOINT
INFRASTRUCTURE PROJECTS, AND
(E) MAINTAIN EXISTING BANK
ACCOUNTS AND BUSINESS FORMS;
AND (II) WAIVING THE
REQUIREMENTS OF 11 U.S.C.
SECTION 345(B) [7]

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2 MOTION OF DEBTORS PURSUANT TO
3 11 U.S.C. SECTIONS 105(A),
4 363(B), AND 503(B)(9) AND
5 FED. R. BANKR. P. 6003 AND
6 6004 FOR INTERIM AND FINAL
7 AUTHORITY TO PAY PREPETITION
8 OBLIGATIONS OWED TO CERTAIN
9 SAFETY AND RELIABILITY,
10 OUTAGE, AND NUCLEAR FACILITY
11 SUPPLIERS [12]

12 MOTION OF DEBTORS PURSUANT TO
13 11 U.S.C. SECTIONS 105(A),
14 363(B), AND 507, AND FED. R.
15 BANKR. P. 6003 AND 6004 FOR
16 INTERIM AND FINAL AUTHORITY
17 TO (I) PAY PREPETITION WAGES,
18 SALARIES, WITHHOLDING
19 OBLIGATIONS, AND OTHER
20 COMPENSATION AND BENEFITS,
21 (II) MAINTAIN EMPLOYEE
22 BENEFITS PROGRAMS; AND (III)
23 PAY RELATED ADMINISTRATIVE
24 OBLIGATIONS [8]

25 MOTION OF PUBLIC ENTITIES FOR
APPOINTMENT OF OFFICIAL
COMMITTEE OF PUBLIC ENTITIES
PURSUANT TO 11 U.S.C.
SECTIONS 1102(A)(2) AND
105(A) FILED BY PUBLIC
ENTITIES IMPACTED BY THE
WILDFIRES [720]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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1 SAN FRANCISCO, CALIFORNIA, WEDNESDAY, MARCH 13, 2019, 9:30 AM

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3 (Call to order of the Court.)

4 THE CLERK: All rise. Court is now in session, the
5 Honorable Dennis Montali presiding.

6 THE COURT: Good morning everyone.

7 IN UNISON: Morning.

8 THE CLERK: Matter of PG&E Corporation.

9 THE COURT: Mr. Karotkin, how do you want to proceed
10 today?

11 MR. KAROTKIN: Good morning, Your Honor. Stephen
12 Karotkin, Weil, Gotshal and Manges for the debtors. My
13 suggestion, of course subject to your guidance, would be that
14 two of the orders first --

15 THE COURT: Two for action and two for no action,
16 right?

17 MR. KAROTKIN: Two of the first day orders which are
18 on today for final hearing to the extent there were any
19 objections they didn't resolve, so I would suggest we proceed
20 with those first, and then the hearing on the DIP motion, and
21 then on the request for an additional committee if that's fine
22 with you.

23 THE COURT: Okay. I have just one, sort of, general
24 housekeeping question. Where is the U.S. Trustee? Is someone
25 from the U.S. Trustee's Office -- oh, I see. So we're about

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1 six weeks into the case and with today, maybe we're going to
2 get done the first wave of first day orders. When am I going
3 to see some employment applications and whether that's going to
4 be heard or what? I mean, if there's a short answer, I'll --
5 that's good enough for me. I just don't want them to get
6 put --

7 MR. GOREN: Well, we --

8 MR. LAFFREDI: We -- go ahead.

9 MR. GOREN: Good morning, Your Honor. Matthew Goren
10 on behalf of the debtors. We've been in contact with the U.S.
11 Trustee's Office and submitting drafts of the various retention
12 applications on a rolling basis. The first wave we're
13 anticipating filing actually later today, Your Honor.

14 THE COURT: Okay.

15 MR. GOREN: And then we are continuing to have
16 discussions with some of the retention applications with Mr.
17 Laffredi's colleagues.

18 THE COURT: Well, I wasn't thinking the ordinary
19 course ones.

20 MR. GOREN: No.

21 THE COURT: I'm thinking the principal one, your firm,
22 committee's, et cetera.

23 MR. GOREN: We are referring to the principal, yeah.

24 THE COURT: And Mr. Laffredi, do you anticipate
25 setting those for hearing or not?

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1 MR. LAFFREDI: Well, we're -- sorry, Your Honor.

2 THE COURT: Yeah. It's all right.

3 MR. LAFFREDI: We've been working through some issues
4 that have been coming up.

5 THE COURT: Okay. You don't have to go public with
6 it.

7 MR. LAFFREDI: Yeah.

8 THE COURT: But I still need to know what to do about
9 it. That's all.

10 MR. GOREN: Sure. I can tell you in some of the
11 discussions with the U.S. Trustee, they've asked us to notice
12 them for a hearing, Your Honor, but whether or not one is
13 necessary, we obviously defer to you and the U.S. Trustee on
14 that, where there have been no issues raised or objections, or
15 if we've worked out all the issues with the U.S. Trustee in
16 advance.

17 THE COURT: Well, let's see if you and the U.S.
18 Trustee work out an agreement. I mean, obviously in simple
19 cases, the run-of-the-mill type employment applications, those
20 are usually set in this District or approved without a hearing.
21 But this case is not that case. So let's just defer it for
22 now. I had a sense that you all hadn't forgotten about it.

23 MR. GOREN: Not at all, Your Honor.

24 THE COURT: But I hadn't -- I was concerned about it
25 because we are -- and I had -- I think on the very first day I

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1 made a point of saying I don't mind waiting for the
2 professionals because there's so much going on in the case.
3 But six weeks? Hey.

4 MR. GOREN: Yeah.

5 THE COURT: We're on a role.

6 MR. GOREN: Thank you, Your Honor.

7 THE COURT: Okay. So let's go back the two routine
8 motions, Mr. Karotkin.

9 MR. KAROTKIN: Yes, sir. The first one's the case
10 management motion. Your Honor, since that motion was filed in
11 both the first day hearing and the second day hearing, we made
12 a number of changes to address some concerns raised by the
13 parties. Most of those were reflected on a proposed revised
14 order that was filed on Friday.

15 THE COURT: Right, I'm aware of that.

16 MR. KAROTKIN: And --

17 THE COURT: Yeah, I'm fine with both of them. Let me
18 take both of them. Does anyone in Court or on the phone want
19 to be heard on the cash management motion or the operational
20 integrity motion? Mr. Laffredi?

21 MR. KAROTKIN: I will --

22 THE COURT: Go ahead.

23 MR. KAROTKIN: I will note one thing, that yesterday
24 we were still in discussions with the U.S. Trustee on some of
25 the 345 matters and we did add one more modification to the

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1 order yesterday to address a concern raised by the U.S. Trustee
2 with respect to one of the banks that is in the process --

3 THE COURT: Right.

4 MR. KAROTKIN: -- of getting the required
5 authorizations --

6 THE COURT: That one bank and that one amount of
7 money, I thought, was going to be deferred?

8 MR. KAROTKIN: It is.

9 THE COURT: Yeah.

10 MR. KAROTKIN: And there's proposed language in the
11 revised order that --

12 THE COURT: No, no. That's fine. I'm okay with that.

13 MR. KAROTKIN: One other thing I would like to
14 mention, with respect to that motion, in the original motion,
15 Your Honor, we had indicated that the estimate amount of
16 accrued pre-petition payment processing fees which relate to
17 fees paid to certain of the banks for payment support and
18 processing for customers making payments by credit card, debit
19 card, ACH bank payment, was approximately 400,000 dollars. As
20 it turned out, that estimate was incorrect. It's closer to 1.1
21 million dollars. I would note that the banks have setoff
22 rights as to that.

23 We would request that -- we note that the final order
24 does not have a proposed cap on that amount, but we wanted to
25 advise the Court and the parties of the error in that estimate.

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1 We could file a supplemental application if you would like,
2 but --

3 THE COURT: I don't think that's necessary. Yeah, no,
4 that's fine.

5 MR. KAROTKIN: Okay.

6 THE COURT: I mean, and if anybody wants to be heard
7 on this, I'll take it right now but it sounds to me like it's
8 perfectly okay to do it that way.

9 MR. KAROTKIN: Thank you, sir.

10 THE COURT: Okay.

11 MR. KAROTKIN: And then on the operational
12 integrity --

13 THE COURT: Did you want to be heard on the cash
14 management, for the gentleman in the back?

15 MR. LEVINE: No, Your Honor.

16 THE COURT: Oh, okay. Sorry.

17 MR. MINNICK: If I could just be heard really quickly?

18 THE COURT: Mr. Minnick, good morning.

19 MR. MINNICK: I just want to confirm that -- this is
20 Dave Minnick for Bank of America, from the Pillsbury firm --
21 that they were able to -- we were able to work out some
22 language I believe they said is included in the --

23 MR. KAROTKIN: Yes, sir.

24 MR. MINNICK: -- revised area with respect to the
25 banks that are authorized banks.

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1 THE COURT: Okay, that's fine. Thank you, Mr.
2 Minnick.

3 MR. KAROTKIN: Thank you.

4 MR. MINNICK: All right.

5 THE COURT: So what else?

6 MR. KAROTKIN: Yes.

7 THE COURT: I mean, I have one other housekeeping
8 matter that -- but I want to take care of these two orders.

9 MR. KAROTKIN: Sure. I mean, operational integrity
10 order, the only revisions that were made, again, they were
11 reflected in what was filed on Friday, deal with advance notice
12 to the committees and now the DIP agent with respect to
13 payments in excess of three million dollars. And we've added
14 language clarifying some of the reporting requirements to the
15 committees and the agent. And other than that, there are no
16 outstanding matters.

17 THE COURT: Okay. I'll look forward to getting those
18 two orders uploaded soon then, just in the normal course. Now,
19 again, you -- gentleman wanted to be heard, but didn't know
20 what about.

21 MR. LEVINE: Your Honor, good morning. Howard Levine
22 from Sussman Shank in Portland on behalf of Wilson's Utility
23 Construction. We did file a response to the operational
24 integrity motion which we wanted to make sure the Court was
25 aware of. And we're very supportive of the motion, and I'm

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1 pleased the Court is going to be granting it.

2 THE COURT: No, I am aware of that. And I had gone
3 down the list of all the people, including your client, had
4 weighed in early on and I was just on the checklist to make
5 sure they aren't forgotten. So that's fine. Thank you, Mr.
6 Levine.

7 MR. LEVINE: Thank you, Your Honor.

8 THE COURT: So we put it to bed briefly recently, the
9 case management order. And people from your office and Ms. Kim
10 particularly was in touch with our office. There are some fine
11 tweaks that I'm going to want to do about that. Let me just --
12 I don't want to spend a lot of time on it.

13 But a number of counsel, including your firm, Mr.
14 Karotkin, has gotten the message. But a number of people are
15 not yet up to speed on the process we've changed to do away
16 with the footers -- your footers on the pleadings. That was a
17 lot of vestige going back ages, but when we went to the
18 electronic filing, the electronic footers overlap the old
19 traditional footers. So I'm just going to ask again that
20 counsel -- and again, particularly not the lawyers who are
21 filing lots of papers in this case -- remind your staff to
22 delete those footers. It's a simple problem. We can't see the
23 document -- the docket information and the footer information.

24 Also, a number -- because of the size of the docket
25 and the number of things that are being filed constantly, and

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1 to some extent the way we have to manage these hearings, I'm
2 going to prepare another modification to the case management
3 order that will require that anyone filing something that
4 relates to a hearing have the hearing date on the front page,
5 and also that there be a docket link or a docket reference so
6 that when we look at the document -- and not we only, everyone
7 looks at the document, can see it linked to the corresponding
8 docket number so that, for example, if one of you files an
9 objection to a hearing that's set for March 27th, your paper
10 that you file should show March 27th, and should show the
11 docket item that is the subject of that motion. My short,
12 small staff here cannot keep up with all of the things that are
13 happening constantly. So I need everyone to help on that.

14 And again, lawyers and non-lawyers who are monitoring
15 these cases on a volume basis, you need that benefit of it
16 also. So no more -- it's not an action item. We'll just get a
17 proposed modification to the case management order for comment
18 by your firm and the committee's counsel.

19 MR. KAROTKIN: Sure.

20 THE COURT: Okay?

21 MR. KAROTKIN: Thank you, sir.

22 THE COURT: Yeah. Thank you.

23 MR. KAROTKIN: Now, I believe, if we could proceed
24 with the motion to approve the DIP financing?

25 THE COURT: And I apologize to those -- I forgot to

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1 include it in the docket text order about it when you'd have
2 time to be heard. Now you will have time to be heard and
3 everybody on board with the way we did the time allocation?

4 MR. KAROTKIN: I believe so, sir.

5 THE COURT: I suggested that you go first with the
6 portion of 45 minutes.

7 MR. KAROTKIN: Yes.

8 THE COURT: Right?

9 MR. KAROTKIN: And Mr. Zumbro will handle that on
10 behalf of the debtors.

11 THE COURT: Here's what I'm going to probably do. I'm
12 going to do my best to listen to the arguments of counsel, but
13 I do have some questions and comments, and perhaps even
14 disagreements with some of the things that have been filed and
15 mentioned. So I'll either do it in the course of the
16 presentation or at the end of the arguments I'll give you my
17 views on a couple of points.

18 A couple of them are minor. A couple of them are
19 clarifying. And a couple of them, I think, are more
20 significant. So with that, Mr. Zumbro, I will invite you to
21 begin and you've got the first portion of 45 minutes. Are you
22 allocating it with the committee on --

23 MR. ZUMBRO: Yes, sir. It's -- per your docket order,
24 we have agreed with an allocation between ourselves, the DIP
25 lender, and the unsecured creditors' committee.

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1 THE COURT: Yeah, I forgot about the DIP lender also.
2 Okay.

3 MR. ZUMBRO: Yep.

4 THE COURT: So do I need to know that or are you just
5 going to do it on your own?

6 MR. ZUMBRO: Let's keep it a mystery for now.

7 THE COURT: Good. You don't have to use the whole
8 time either.

9 MR. ZUMBRO: No. And I don't intend to. Thank you,
10 sir. So, good morning. It's good to be here before you again.
11 Paul Zumbro from Cravath, Swaine and Moore on behalf of the
12 debtors.

13 So we're here to request that the Court enter the
14 proposed final order requesting the relief requested in the DIP
15 motion. At the first day hearing, Your Honor approved the
16 proposed DIP financing on an interim basis. Since that time, I
17 do want the Court to know that the debtors have prudently
18 managed borrowing under the DIP facility.

19 As you may recall, Your Honor, we discussed the 1.5
20 billion dollars for which we sought authorization on the first
21 day hearing. And I told Your Honor that we were only going to
22 use as much borrowing as we needed.

23 THE COURT: Right.

24 MR. ZUMBRO: And I just wanted to report that as of
25 February 28th, which is when the debtors filed our 10-K, that

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1 the utility had outstanding borrowings of 350 million dollars
2 plus thirty million dollars in letters of credit of the 1.5
3 billion authorized at the interim hearings. I just wanted to
4 make sure the Court was aware that, although we did get
5 authorization for the higher amount, we did utilize the
6 flexibility --

7 THE COURT: Come in under budget. It's always a good
8 practice.

9 MR. ZUMBRO: Under the budget, correct.

10 THE COURT: Yeah.

11 MR. ZUMBRO: Also as the Court's aware, since we were
12 here before Your Honor last time on the DIP motion, the
13 official committees had been formed. The unsecured creditors'
14 committee was formed on February 12th, the tort claimants'
15 committee was formed on February 15th. Both committees
16 subsequently retained counsel, as well as financial advisors.
17 And the debtors, and our financial advisors at Lazard and
18 AlixPartners, worked very closely with the advisors for the
19 committees to make sure they had a full opportunity to
20 diligence, both from a legal and financial perspective, the
21 proposed DIP facility financing terms.

22 We also worked with them on informal objections and
23 addressing certain of the matters that were raised. We filed a
24 black line of the proposed order on the docket at number 709-1.
25 We filed that on February 28th to make sure everybody had

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1 adequate notice to review and digest that before today's
2 hearing.

3 I think importantly, Your Honor, the unsecured
4 creditors' committee filed yesterday a statement in support of
5 the DIP facility. We do acknowledge that the tort committee
6 and certain other wildfire claimants filed limited objections.
7 And as we stated in our reply, Your Honor, the debtors are
8 certainly mindful of some of the concerns that were raised in
9 those papers, but we just believe that those are not really
10 relevant considerations for a DIP financing.

11 THE COURT: Well, some of them are. I mean, some of
12 the fire victims' committee are more traditional and some are
13 not.

14 MR. ZUMBRO: Right.

15 THE COURT: And I mean, I'm not -- it's not all or
16 nothing as far as I take it, particularly from the fire
17 committee.

18 MR. ZUMBRO: I understand. I'm going to go through
19 the ones that we viewed as --

20 THE COURT: Okay.

21 MR. ZUMBRO: -- sort of significant, live objections
22 and, of course the Court, if you have -- you mentioned you had
23 some other concerns. We'll be happy to address the --

24 THE COURT: Well, somebody has to raise them, right?

25 MR. ZUMBRO: Exactly. But before I go through the

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1 objections, Your Honor, first and foremost, I think it's
2 important to note that nobody -- not even the tort committee --
3 nobody has really objected to the core principle proposed
4 financing. Nobody has said that we don't need the funding.
5 Nobody has disputed the fact that, without the financing, the
6 debtors' ability to provide safe and reliable gas and
7 electricity service to the millions of customers who would be
8 at risk -- nobody has disputed that our business judgment was
9 properly exercised in connection with the DIP.

10 Moreover, nobody has challenged the size of the DIP
11 facility and nobody has challenged the adequacy of the debtors'
12 marketing process in respect of the DIP facility. Those are,
13 sort of, key from our perspective. We believe --

14 THE COURT: On that subject, I am a fan of proper
15 foundation for making good faith findings and the DIP papers
16 talk about a good faith finding. And I did review Mr. Kurtz's
17 declaration, and I was satisfied that if I'm persuaded to
18 approve the financing, I'll make the corresponding finding
19 because his declaration, I think, adequately lays that
20 foundation.

21 MR. ZUMBRO: Thank you, sir. Yes. I do think he
22 describes the marketing process, as well as the good faith
23 negotiation with the DIP lenders. So we appreciate that.

24 Overall, we think it's a very clean DIP financing.
25 It's favorable in terms of both pricing and other terms from

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1 the debtors' perspective. And we really do think that's the
2 key overall point. But with that, I'd like to just briefly
3 address a few of the live objections, the ones that we thought
4 were the most significant, and how the debtors view those.

5 The first, I think, is the stay relief point, Your
6 Honor. The tort committee objects to the, sort of, automatic
7 granting of stay relief. They would prefer to switch the
8 burden to the DIP lenders on the stay relief point.

9 Your Honor, we did negotiate very carefully the event
10 of default triggers. We feel very comfortable that the
11 covenants in the credit agreement are sufficiently flexible and
12 have sufficient levels of materiality built into them that the
13 debtors feel very comfortable we can operate without there
14 every being an event of default. If, however, an event of
15 default is triggered, we understand the DIP lenders' position
16 that the burden of proof on stay relief should not be on them.
17 We agree with their view of debts and their reply that that
18 would not be market.

19 And we think at the same time, however, that doesn't
20 mean that this Court and other parties in interest won't have
21 an opportunity to weigh in on the issue. The DIP lenders did
22 agree for a longer than market customary term for the remedies
23 notice period. We have seven days, which is longer than is
24 typical.

25 THE COURT: Week days. Total days, not -- and even

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1 business days?

2 MR. ZUMBRO: Correct, seven days.

3 THE COURT: Yeah. I'll come back to it later.

4 MR. ZUMBRO: Okay.

5 THE COURT: I'll listen to the comments.

6 MR. ZUMBRO: Okay.

7 THE COURT: I'll say that's an issue for me, too. So.

8 MR. ZUMBRO: Okay. But we do agree that that is
9 longer than is typical. I think five or three days is probably
10 more typical in the market. But importantly, people have the
11 opportunity.

12 And we also agreed -- through the negotiation process,
13 we wanted to make sure that everybody was aware of that. So
14 the debtors agreed to file on the docket. If a remedies notice
15 was put on, we were going to file on the docket within a
16 business day of that occurring so all parties in interest in
17 the case would be aware of the fact that it had been filed; not
18 just counsel to the main official committees as would be
19 typical, but every party in interest in the case will have
20 notice of that.

21 And whether termination has then occurred is obviously
22 something in that circumstance for the Court to determine. But
23 even as this Court does determine a termination event has
24 occurred, we think paragraph 35 of the proposed order is quite
25 clear that -- makes it quite clear that CPUC's approval is

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1 required for any transfer of utility assets. That was --

2 THE COURT: You know, some of your colleagues have
3 been busy trying to persuade me and some other courts to make
4 sure that we keep exclusive decision making in the bankruptcy
5 court and not in some other entity. That's for another day but
6 you know, that is an issue that's on people's minds, in terms
7 of the CPUC has its authority and its prerogatives but the
8 bankruptcy court does have some decision making. Okay?

9 MR. ZUMBRO: Absolutely.

10 THE COURT: So.

11 MR. ZUMBRO: It's a balance but we think we struck the
12 right balance by saying, this Court has the -- has obviously
13 under the Bankruptcy Code, it's up to this Court to decide
14 whether the stay relief should be granted. It's up to the --

15 THE COURT: Yeah but I don't think -- I think you've
16 taken that away. If I read your papers correctly, the only
17 thing that I see in the DIP order, unless I've missed it, and
18 we'd come back to it later, is the Court's function is to
19 determine if there's been an event, not --

20 MR. ZUMBRO: That's correct.

21 THE COURT: -- not if there's relief of stay --

22 MR. ZUMBRO: That's correct.

23 THE COURT: -- which is a different analysis.

24 MR. ZUMBRO: Correct.

25 THE COURT: Okay.

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1 MR. ZUMBRO: So if this Court determines a termination
2 event has occurred --

3 THE COURT: So then we just pack up our bags and go
4 home, right?

5 MR. ZUMBRO: From the perspective --

6 THE COURT: Go ahead.

7 MR. ZUMBRO: -- of this Court, yes.

8 THE COURT: Yeah.

9 MR. ZUMBRO: But I think it's important that the CPUC
10 who's advised by a competent counsel also negotiate. I
11 understand that there's a tension there between this Court's
12 authority and the authority of the CPUC. But the debtor -- we
13 obviously respect this Court's authority but you have to
14 understand, we also have to be respectful of our principal
15 regulator. And so we try to perform the balance --

16 THE COURT: I don't mean to suggest that the
17 bankruptcy court should trump or preempt the CPUC. The
18 question is whether there is any discretion left on this table.
19 But let's again, stick with what we -- I promised you I'd
20 listen to you and the objectors, and then I'll give you my
21 thoughts on the subject.

22 MR. ZUMBRO: Thank you, sir. I guess, my point was
23 that we think that their tort claimants' suggestion that the
24 CPUC's approval wouldn't be needed in addition to this Court
25 having determined that a termination event has occurred is

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1 misplaced, it is inconsistent with the words of the order. I
2 think that there's sort of too clever by half dichotomy
3 between, we will seek approval, and we will obtain approval.
4 That was clearly not what's intended. I think the wording is
5 quite clear that we would have to obtain the approval of the
6 CPUC.

7 THE COURT: Just remind me of what paragraph that is?

8 MR. ZUMBRO: That's paragraph 35.

9 THE COURT: Oh, okay. Yeah, all right. Go ahead. I
10 got it.

11 MR. ZUMBRO: In terms of the next issue, is case
12 controls. I -- we don't believe that the tort claimants'
13 committee suggests that the DIP lenders will have undue control
14 over the debtor's reorganization. In fact, Your Honor, as we
15 sort of stressed the first day when we were before you, these
16 DIP lenders have less control in this case than is typical.
17 There's absolutely no case milestones of any kind --

18 THE COURT: Well, there is a -- there is a drop-dead
19 date, right?

20 MR. ZUMBRO: There's a drop-dead date for getting the
21 final approval of the DIP financing. But it's -

22 THE COURT: No, no. I know that. But I mean, the --

23 MR. ZUMBRO: Well, there's a maturity date of the
24 facility, yes.

25 THE COURT: 2020.

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1 MR. ZUMBRO: Correct.

2 THE COURT: The end of next year, isn't it?

3 MR. ZUMBRO: Correct.

4 THE COURT: Okay.

5 MR. ZUMBRO: With -- we also negotiated on that
6 point --

7 THE COURT: I hear.

8 MR. ZUMBRO: -- for a one-year extension.

9 THE COURT: No, I understand. But backup. The
10 immediate deadline, it's the middle of next month for the
11 DIP -- okay.

12 MR. ZUMBRO: Yes, sir. April 15th --

13 THE COURT: Right.

14 MR. ZUMBRO: -- is the deadline for getting the final
15 order approved.

16 THE COURT: Okay.

17 MR. ZUMBRO: But other than those milestones that
18 relate specifically to the DIP financing process, there are no
19 milestones of any kind that relate to the case, in terms of
20 filing a disclosure statement, or filing a plan of
21 reorganization or any typical asset sales, any type of thing
22 you might otherwise see in a DIP order that sometimes other
23 parties complain about, zero of that here. There's no
24 financial maintenance covenants, there's no budget --

25 THE COURT: Right.

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1 MR. ZUMBRO: -- there's no variance testing. We
2 negotiated a very favorable DIP in terms of -- as this Court is
3 aware, this is a very complicated case with a lot of moving
4 parts, and we wanted to make sure the financing was supporting
5 the case but not unduly directing it. So we think that the
6 tort committee objections in that regard are off base.

7 On that -- we think the acceptable plan is a bit of
8 red herring issue. All that means is that we have to repay the
9 DIP lenders. They have a super priority plan, and we couldn't
10 confirm a plan without repaying them, in full, in cash, unless
11 they consented to different treatment, which in my experience
12 is not typical for DIP lenders to agree to different treatment.
13 So all it says, that we can't file a patently unconfirmable
14 plan, Your Honor. So we don't think that is tantamount in any
15 way to an undue case control, or any case control.

16 The last sort of significant issue I wrote down was
17 the liens on avoidance action proceeds. That was an issue that
18 the Court and I discussed when I was here last in front of you.
19 We punted -- as Your Honor may recall, we punted the issue, I
20 think appropriately, on liens on avoidance action proceeds on
21 the first day hearing, pending the formation of the unsecured
22 creditors' committee, which I believe was an appropriate
23 approach to the issue. It is important, I think, that we
24 reached a compromise with the DIP lenders, and the unsecured
25 creditors' committee on this topic for a marshaling concept.

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1 We modified the terms of the proposed order. This is in
2 paragraph 24 where the DIP lenders agreed to look at every
3 other type of collateral first before they would look at the
4 avoidance actions proceeds.

5 We were unsuccessful in attempting to get them to drop
6 the point, just --

7 THE COURT: If it comes to that, we have trouble,
8 don't we?

9 MR. ZUMBRO: We do, Your Honor, but --

10 THE COURT: With a big cushion here?

11 MR. ZUMBRO: I think, you know, stepping back, there's
12 sort of -- on the one hand, we have very favorable -- the DIP
13 lenders said to us, we're going to give you good terms in terms
14 of pricing, we have a very favorably priced --

15 THE COURT: That's what I -- that's what the guy told
16 me, who was giving me a quote to fix my roof, you know.

17 MR. ZUMBRO: I hope he didn't ask you for collateral
18 but they did say we need collateral. Good terms but we need a
19 robust security package. And so that was the tradeoff that we
20 felt was the best deal for the debtor, good pricing, flexible
21 terms on the one hand, and you have a robust security package
22 on the other hand.

23 That's what we agreed to and we did agree -- the DIP
24 lenders were not monolithic in their approach, Your Honor. I
25 think it's important to note that. For example, the CPUC was

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1 concerned about certain public programs and making sure that
2 the DIP lenders' lien didn't interfere with them, and the DIP
3 lenders did, as part of the first day, agree to those types of
4 exceptions from their collateral package but they weren't
5 willing to agree to this point.

6 Your Honor, I believe the other objections relate to
7 issues that are largely parochial issues or really issues that
8 are unrelated to the DIP financing.

9 THE COURT: What about the question of -- and maybe
10 this was as subset of marshaling -- about no enforcement on
11 utility assets until nonutility assets have been exhausted?
12 Isn't that a form of marshaling?

13 MR. ZUMBRO: It's a form of marshaling and we
14 discussed it with the tort claimants' committee. We discussed
15 it with the DIP lenders, and it wasn't a modification the DIP
16 lenders were willing to make. They --

17 THE COURT: Okay. But there's still -- I mean, it's
18 not something like making contributions to fire victims, and it
19 is on the list of the tort claimants --

20 MR. ZUMBRO: Correct. The DIP lenders were not
21 prepared --

22 THE COURT: -- list of complaints.

23 MR. ZUMBRO: That's right.

24 THE COURT: No, I understand. I understand.

25 MR. ZUMBRO: I mean, we can go through all of it if

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1 you wish but those are the main ones I thought that were worth
2 discussing, but I'm happy to go through each one.

3 THE COURT: No, I just -- you've gone through it in
4 the sense that the committee -- that committee has raised it,
5 you've said that the DIP lenders have declined the invitation.
6 So --

7 MR. ZUMBRO: Correct.

8 THE COURT: -- that's where we are at the moment.

9 MR. ZUMBRO: Correct.

10 THE COURT: I've gotcha.

11 MR. ZUMBRO: Correct.

12 THE COURT: I just wanted to make sure I understood
13 where we are on that.

14 MR. ZUMBRO: Right. So we did -- every one of the --
15 we had two or three -- we had several calls with the tort
16 committee counsel as well as the DIP lenders, and we did
17 attempt to address all of their comments but we were able to --
18 what we've able to do is what's reflected in the proposed
19 order.

20 THE COURT: Okay. But one of the things that they --
21 again, I say, they, meaning the tort claimants --

22 MR. ZUMBRO: Yeah.

23 THE COURT: -- and particularly the committee, though
24 the tort claimants' objections are rather discrete, and that is
25 repeated there more than once was, no improvement on the pre-

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1 petition unsecured debt. And so I assume it's not an issue but
2 I just wanted to see where is that on the list?

3 MR. ZUMBRO: It's not an issue. We had a hard time
4 with sort of even understanding the point.

5 THE COURT: Well --

6 MR. ZUMBRO: There was unsecured debt --

7 THE COURT: Well, it's called a roll-up, you know what
8 means, and there's a --

9 MR. ZUMBRO: We do.

10 THE COURT: -- certain amount of pre-petition
11 unsecured debt.

12 MR. ZUMBRO: Correct.

13 THE COURT: So if somebody had a devious way of
14 rolling it into DIP collateral, guess what?

15 MR. ZUMBRO: Even we weren't smart enough to come up
16 with any way of doing that. There is no roll-up. I can
17 represent to the Court.

18 THE COURT: I know how to draft roll-up provision. So
19 do you. But it isn't in there, you agree?

20 MR. ZUMBRO: There is none. There is none.

21 THE COURT: Okay. So counsel for the tort committee
22 will have to tell me if they think it's still in there, if they
23 concede the point, then we will worry about it. I won't --
24 I'll take your representation that -- and I have read, not
25 every word of every document but I've read the -- a lot of

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1 stuff here. So I'm -- it sounds right to me too.

2 MR. ZUMBRO: We don't believe there's any roll-up.

3 THE COURT: Okay.

4 MR. ZUMBRO: Or anything that could be considered a
5 disguised roll-up.

6 THE COURT: Okay.

7 MR. ZUMBRO: The -- so we talked about the automatic
8 stay, we talked about liens on avoidance actions, you know,
9 just to go through the list. The debtors should not be
10 prohibited from using the DIP loans to investigate claims
11 against the DIP lenders. We think that's very standard. There
12 aren't really any investigations here because for that very
13 issue. It was unsecured and now it's secured. It's not like
14 we're -- we or the committee has any need to investigate the
15 lien status, or perfected status of any liens. It just isn't
16 an issue in this case, in light of the nature of the capital
17 structure --

18 THE COURT: Well, there's one narrow one that I'll
19 come back to when I go through the comments, after I hear from
20 them. It's probably not a deal breaker but I'll at least raise
21 it for you to think about.

22 MR. ZUMBRO: Okay. But it's important to note that
23 it's also limited to their -- this protection is limited to the
24 DIP lenders in their capacity as DIP lenders. So they're not
25 getting anything beyond an inducement to lend.

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1 We talked about the acceptable plan. This notion that
2 we aren't able to incur new indebtedness, also gives them undue
3 control. It is, I think, again, misplaced. We -- obviously,
4 in order to exit this bankruptcy, we're going to have incur
5 exit financing, the proceeds of which would be used to repay
6 the DIP loan. But the notion that somehow a limitation on
7 additional indebtedness, which is the customary term of any
8 loan agreement, somehow gives the DIP lenders control over the
9 case here, I think, is also misplaced.

10 THE COURT: Well, okay. But let's not say it's
11 control. Let's clarify, is there a default, if there is a
12 junior lien placed on any asset, and if so, why is that even
13 necessary?

14 MR. ZUMBRO: There are covenants that limit the amount
15 of additional indebtedness and additional secured debt that we
16 can incur under the credit facility, if, as I mentioned
17 earlier, we think we have sufficient flexibility under those
18 covenants. But if we were to do something that violated them,
19 yes, it would be an event of default.

20 THE COURT: So give me a specific as to a junior
21 secured claim. Because I couldn't -- I didn't find it
22 specifically. Is it dealt with in the proposed order?

23 MR. ZUMBRO: It would be in the credit agreement
24 itself I -- the covenant package that governs the financing.

25 THE COURT: Well, then just give it to me in lay

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1 terms. In other words, what can't the debtor do at the risk of
2 being in default under the DIP if it wants to incur junior
3 secured debt?

4 MR. ZUMBRO: There --

5 THE COURT: Not exit financing --

6 MR. ZUMBRO: Right.

7 THE COURT: -- but just debt.

8 MR. ZUMBRO: There are a number of baskets that would
9 be relevant. For example, by way of example, there's a debt
10 basket that allows the debtor to incur capital lease
11 obligations which is a form of secured debt.

12 THE COURT: Right.

13 MR. ZUMBRO: Not to exceed 500 million dollars.
14 That's an example of one of the things where, yes, there's a
15 limitation but we negotiated a limitation that we thought was
16 sufficient to give us financing flexibility. There's other
17 baskets for other unsecured indebtedness of up to fifteen --
18 excuse me, twenty-five million dollars.

19 THE COURT: Well, that's not the one that it's in
20 there for the post-default, twenty-five million for --

21 MR. ZUMBRO: No, no, no. That's a different twenty-
22 five million --

23 THE COURT: That's a different issue.

24 MR. ZUMBRO: -- dollars. And as a general basket of
25 other unsecured -- other indebtedness, excuse me, of up to 150

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1 million dollars. So there's a number of baskets that permit to
2 incur indebtedness without having to go back --

3 THE COURT: So that would be -- I take it, that would
4 be 364(b) or (c), unsecured or junior secured debt.

5 MR. ZUMBRO: It could be junior secured. There are
6 also liens baskets that permit us to incur certain liens that,
7 you know, anything would have to -- any additional post-
8 petition financing would be back before Your Honor, including
9 the four billion-dollar incremental party pass-through basket,
10 we would have to get the Court's further approval. But the
11 notion that we're somehow hamstrung on our ability to incur
12 additional debt, I think is really misplaced. Because what we
13 really do is go to the incremental which is the most cost-
14 effective means of additional financing.

15 THE COURT: Okay. But I think I picked up from your
16 response --

17 MR. ZUMBRO: Uh-huh.

18 THE COURT: -- to the objections that the DIP lenders
19 were unwilling to extend the 503(b) and (4) protections into
20 the carve-out?

21 MR. ZUMBRO: That's correct.

22 THE COURT: Okay. So let's hold that thought for a
23 minute.

24 MR. ZUMBRO: Okay.

25 THE COURT: What is the legal status or the legal fate

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1 of a 503(b)(3) or (4) claimant who doesn't get the benefit of
2 the carve-out?

3 MR. ZUMBRO: Well, the legal --

4 THE COURT: In other words, suppose --

5 MR. ZUMBRO: Yeah.

6 THE COURT: -- somebody makes a proper demonstration
7 of entitlement to a substantial sum of money --

8 MR. ZUMBRO: Right.

9 THE COURT: -- under -- well, you know, (3) and (4) go
10 together, what -- how does that get resolved in the hierarchy
11 of post-petition DIP and unsecured DIP -- I mean, excuse me,
12 DIP financing and post-petition debt?

13 MR. ZUMBRO: It would be -- to the extent that the
14 person sought a substantial contribution claim and the Court
15 granted administrative expense status for that, there would be
16 an administrative expense claim in the case. There's nothing
17 in the Bankruptcy Code or practice that I'm aware of that
18 there's any type of claim to get a super, super priority
19 status.

20 THE COURT: No. I'm not asking for -- right. And we
21 can't have someone talking on the phone here.

22 MR. ZUMBRO: So those persons would have -- well,
23 first of all, we think it's premature. We don't think there is
24 any market practice for a DIP lender ever agreeing to carve
25 out -- the DIP lenders are here, they can speak for themselves

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1 but the carve-out --

2 THE COURT: No. Look, I'm conceding the point for the
3 moment --

4 MR. ZUMBRO: Okay.

5 THE COURT: -- about a carve-out.

6 MR. ZUMBRO: Yes, it would be an administrative
7 expense status.

8 THE COURT: I'm asking you, and maybe it's premature,
9 and maybe it's hard to visualize it --

10 MR. ZUMBRO: Right.

11 THE COURT: -- but let's go back, let's take a
12 snapshot of the DIP financing if I sign the order.

13 MR. ZUMBRO: Yeah.

14 THE COURT: We have the DIP facilities, up to five and
15 a half billion dollars, we have the worker's self-insurance
16 thing, we have some miscellaneous stuff, we have the capital
17 financing, and then we have just unsecured post-petition debt.

18 MR. ZUMBRO: Correct.

19 THE COURT: Ordinary course of business. God forbid,
20 post-petition tort claims, and but I'm trying to get a
21 different situation. If there is not one of these consensual
22 things like a trade debt or -- but rather somebody who is
23 entitled to administrative priority, my question really is,
24 does that trigger a default or do they just stand in line
25 behind the DIP facility --

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1 MR. ZUMBRO: Oh, I'm sorry. I didn't understand your
2 question.

3 THE COURT: -- along with all the other post-petition
4 claims?

5 MR. ZUMBRO: Yeah. It does not trigger a default.
6 They would just have whatever priority that the Bankruptcy Code
7 provides for them which is administrative expense
8 (indiscernible).

9 THE COURT: Well, okay but if a lender says, I'm going
10 to loan some money to the debtor in possession --

11 MR. ZUMBRO: Right.

12 THE COURT: -- under 364(c) --

13 MR. ZUMBRO: Um-hum.

14 THE COURT: -- therefore unsecured but priority --

15 MR. ZUMBRO: Um-hum.

16 THE COURT: -- that also isn't -- well, it may or may
17 not trigger a default, depending upon the amount, right?

18 MR. ZUMBRO: It mostly would not because we would --
19 it would fit within that 500-million-dollar basket or another
20 one of the baskets. It's --

21 THE COURT: Right. I'm not suggesting a 503(b)(3) or
22 (4) claim will be 500 million dollars but I'm trying to
23 understand where everybody lines up in relative positions and
24 what might trigger a default?

25 MR. ZUMBRO: Right.

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1 THE COURT: And that to me is the more significant
2 issue here.

3 MR. ZUMBRO: There's no basis under any of the loan
4 agreements or the order or any other documents that I'm aware
5 of, that any substantial contribution claim could trigger a
6 default under the DIP loan. Yes, the DIP loan would come
7 ahead, the DIP loan is in priority --

8 THE COURT: Of course.

9 MR. ZUMBRO: -- because it's super priority status --

10 THE COURT: Of course.

11 MR. ZUMBRO: -- would come ahead of that claimant, and
12 that's the issue that I think we weren't willing -- we weren't
13 able to accommodate the request but it would just be in
14 accordance of the bankruptcy priorities which they would have
15 an administrative expense.

16 THE COURT: Okay. But you know I didn't just make up
17 this 503 stuff. We have at least, what, four unofficial
18 committees --

19 MR. ZUMBRO: We do.

20 THE COURT: -- and one committee that might be
21 official and might be unofficial, but the point is there may be
22 a number of claimants. Again, maybe we're not going to get in
23 to the astronomical amounts --

24 MR. ZUMBRO: Right.

25 THE COURT: -- but you know, it adds up. And so I --

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1 but importantly I needed to hear from you that it -- whether it
2 somehow might trigger some adverse consequence vis-à-vis the
3 debtors.

4 MR. ZUMBRO: I don't -- we don't -- as we stand here
5 today, the debtors don't take a position on substantial
6 contribution. We think it's premature. You know, as the case
7 develops --

8 THE COURT: Right.

9 MR. ZUMBRO: -- and if someone else makes a
10 substantial contribution to the case, you know, I'm not arguing
11 the motion before the Court today but if someone makes -- we
12 have no issue with that as I stand here today. I don't have a
13 view one way or the other on it. It doesn't affect the DIP
14 financing and there's no way it could trigger a default, but
15 the DIP lenders are not allowed to say, that money comes ahead
16 of us because it's just an unknowable.

17 THE COURT: Again, you keep repeating what I'm not
18 even asking.

19 MR. ZUMBRO: Okay.

20 THE COURT: I'm not asking anybody to prime the DIP
21 lenders.

22 MR. ZUMBRO: Okay.

23 THE COURT: There may be objectors here that think
24 that some claimants, whether they be 503(b)(3) and (4) or some
25 other category should get the benefit of carve-outs but I'm --

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1 that's not what I'm asking about.

2 MR. ZUMBRO: The objectors did ask for that. That's
3 why I just wanted to make it clear. But yes, we understand the
4 Court's concern but there is no adverse implications for the
5 DIP facility for anybody making such a claim.

6 THE COURT: There are, however, consequences under the
7 DIP facility to trigger a default if some huge event, like,
8 conversion of the case, you see --

9 MR. ZUMBRO: Sure. Sure.

10 THE COURT: -- or material change in financial
11 condition, right?

12 MR. ZUMBRO: There is no material change in financial
13 conditions. They are very high thresholds. If for example,
14 you know, the whole electricity grid were shut down for some
15 material amount of time, you would expect the DIP lenders would
16 want to, you know, have something, and that would be a trigger.
17 But other than that --

18 THE COURT: Yeah. But that -- Mr. Zumbro, there's an
19 elephant in the room here.

20 MR. ZUMBRO: Okay.

21 THE COURT: We all know there is a risk we will have
22 2019 wildfires.

23 MR. ZUMBRO: I understand.

24 THE COURT: And if there's a post-petition tragedy
25 such as happened in the past two years --

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1 MR. ZUMBRO: Yes.

2 THE COURT: -- there could be an astronomical claim,
3 that, at least absent some other outcome, would be
4 administrative priority --

5 MR. ZUMBRO: Yes.

6 THE COURT: -- and might indeed trigger a DIP default
7 because of the astronomical size of it.

8 MR. ZUMBRO: I understand, Your Honor. Well, let's
9 just address the elephant. I mean, that elephant in the room
10 is the reason the DIP lenders insisted on secure status.

11 THE COURT: I got you. I understand.

12 MR. ZUMBRO: Because they said, look, we are concerned
13 also that God forbid there's another wildfire during the course
14 of the case, we want to make sure that we have a lien so that
15 we -- our right to repayment is prior to that. That is exactly
16 why there is secured --

17 THE COURT: Yeah, Mr. Zumbro, you're -- I'm not -- I
18 haven't ever been a Wall Street finance lawyer --

19 MR. ZUMBRO: Uh-hum.

20 THE COURT: -- but I did -- I have been around the
21 block on DIP financing and I know that. My question though is,
22 under some circumstances I would assume the DIP lenders could
23 declare a default because of material adverse consequences and
24 I use the horrible nightmarish example that could happen and
25 you used another one of a grid failure.

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1 MR. ZUMBRO: Yeah. I don't --

2 THE COURT: So there are at least two potentials like
3 that.

4 MR. ZUMBRO: Yeah. Let me try to answer the
5 question. It's something that we specifically thought about,
6 and I don't believe a wildfire event, we all hope it doesn't
7 happen, but if it were to happen, a post-petition wildfire
8 event would not in and of itself constitute a default under the
9 DIP, so.

10 THE COURT: Material. What's the definition of
11 material? Again, you and I don't have to debate this.

12 MR. ZUMBRO: Right.

13 THE COURT: It's a question that I think needs -- we
14 just need to think about it, and I will -- I still have some
15 concerns about some other kinds of defaults --

16 MR. ZUMBRO: Okay.

17 THE COURT: -- that are not so catastrophic.

18 MR. ZUMBRO: Okay.

19 THE COURT: Let's go back to your presentation and --

20 MR. ZUMBRO: Sure --

21 THE COURT: -- unless you want to yield the floor to
22 somebody else.

23 MR. ZUMBRO: I'm almost done. I think we've got -- I
24 guess the other points, just to make sure that we cover
25 everything, we don't think -- we talked about the roll up. We

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1 don't think we can condition the DIP financing on the use of --
2 as we said in our objection, we are mindful of the
3 circumstances of certain of the victims of campfire, but we
4 don't think it's appropriate to sort of tie that to the DIP
5 financing as has been requested.

6 Similarly we don't -- the reason we're in Chapter 11
7 is to sort of have an orderly process for all wildfire
8 claimants. And so I don't think we can condition the DIP
9 facility on certain settlement payments.

10 THE COURT: Well, like the SLF fire.

11 MR. ZUMBRO: Correct.

12 THE COURT: Fifty-two claimants. No, I understand.

13 MR. ZUMBRO: Correct. And I think we've talked about
14 the substantial contribution claims and that's really
15 everything -- oh, the lobbying. Obviously, it's an important
16 part of this case that these debtors be able to sort of
17 interact not only with regulators but also with the
18 legislature.

19 I don't think there's any way we could sort of agree
20 to not -- I don't know whether that would constitute lobbying,
21 but we can't agree in terms of the DIP financing that we can't
22 talk to governmental officials because it's clearly important
23 for the people of California that we be able to do so.

24 THE COURT: Right.

25 MR. ZUMBRO: And that -- those are the full list of

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1 items that I had --

2 THE COURT: Okay.

3 MR. ZUMBRO: So we do think that the DIP is the best
4 available. We would urge the Court to overrule the objections,
5 but I'll reserve whatever additional time -- I may have gone
6 over my time, but --

7 THE COURT: Yeah, you -- but that's okay. And the
8 other counsel, if they want to be heard, I'm going to let them
9 do it. So don't --

10 MR. ZUMBRO: So let me -- I guess the way we set it
11 up, I was going to ask Mr. Hansen from the Stroock firm to come
12 next, and then after that the creditors' counsel --

13 THE COURT: Okay.

14 MR. ZUMBRO: -- unsecured creditors' counsel.

15 THE COURT: That's fine. Mr. Hansen --

16 MR. ZUMBRO: And then we'll -- to the extent we need
17 to have any rebuttal, I'll come back to the podium.

18 THE COURT: Thank you.

19 MR. ZUMBRO: Thank you, sir.

20 THE COURT: Mr. Hansen, good morning.

21 MR. HANSEN: Good morning, Your Honor. Kris Hansen
22 with Stroock & Stroock & Lavan on behalf of JPMorgan Chase as
23 the administrative agent for the DIP loan as well as on behalf
24 of the DIP lenders.

25 Your Honor, I don't want to go through the list of

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1 objections Mr. Zumbro did. I wanted to address some of the
2 points that you raised in your discussion with Mr. Zumbro to
3 help clarify a few things if I could. The first thing is, I
4 just want to touch upon that last discussion that you had from
5 the material adverse effect perspective.

6 Your Honor, so the definition of material adverse
7 effect in the loan or credit agreement is a change in the
8 business property, operations, or financial condition of the
9 company taken as a whole. So we're not talking about any
10 specific aspect of it, it's taken as a whole.

11 And then you have to skip the parenthetical because
12 we except out the bankruptcy case. They could reasonably be
13 expected to materially and adversely affect the ability of the
14 loan parties to perform their obligations on the DIP.

15 THE COURT: What paragraph are you looking at?

16 MR. HANSEN: Oh, I'm sorry, I'm looking at the
17 defined term material adverse effect in the --

18 THE COURT: I have the loan agreement here. Just
19 tell me where to go find it.

20 MR. HANSEN: It's page 16.

21 THE COURT: Okay. All right. Taken as a whole, I
22 mean, whatever that means. Do you know what that means?

23 MR. HANSEN: Yeah. Taken as a whole was highly
24 negotiated. It means the business operation as a whole, not
25 any individual aspect of it.

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1 THE COURT: Okay.

2 MR. HANSEN: And when you look further through that
3 paragraph, post-parenthetical, which carves out the bankruptcy
4 proceeding --

5 THE COURT: I've been told, without knowing it to be
6 true, that the debtor's assets are in the seventy billion
7 dollar range, but I've also been told that the campfire alone
8 might be thirty to fifty billion dollars of claims. Now, that
9 starts to sounds like a material adverse change to me if
10 there's another one of those horrible fires. Why wouldn't it
11 be?

12 MR. HANSEN: It would -- well --

13 THE COURT: I mean, again --

14 MR. HANSEN: Let me put it this way --

15 THE COURT: -- we don't want it to happen --

16 MR. HANSEN: -- it has to -- it has to affect --

17 THE COURT: -- but why wouldn't it --

18 MR. HANSEN: It has to affect the debtors' ability to
19 repay the DIP loan. The DIP loan has first priority liens on
20 all the debtors' assets. So clearly if those post-petition
21 wildfire liabilities -- so post-petition. You're postulating
22 it --

23 THE COURT: I am, unfortunately, postulating exactly
24 that.

25 MR. HANSEN: Yeah. Exactly. So you take a

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1 post-petition situation where they have -- we're going to
2 speculate for a moment. I hope it never happens -- but massive
3 wildfire liabilities on a post-petition basis. And we're going
4 to take it for a moment that they don't have an effective way
5 through the assistance of this Court or the CPUC or any other
6 body to address those payments, and they simply have to make
7 them.

8 If they don't have the revenue to make those
9 payments, obviously they can't continue to pay their employees,
10 they can't continue to move on.

11 THE COURT: Right, right.

12 MR. HANSEN: I guess that would be an MAA. But the
13 reality is that they've got thirty billion dollars of potential
14 liabilities on a pre-petition basis. Going forward, they are
15 trying to, obviously, make a --

16 THE COURT: But those pre-petition liabilities are
17 not events of default. They are --

18 MR. HANSEN: Correct.

19 THE COURT: -- they're in the books. They're on the
20 books right now.

21 MR. HANSEN: Absolutely, Your Honor. Correct.

22 THE COURT: Okay, so.

23 MR. HANSEN: But again, as Mr. Zumbro said, right,
24 that part of the reason that the bank doesn't have and the DIP
25 lenders don't have budget testing covenants, milestones,

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1 financial maintenance covenants is because they have liens and
2 they're the only secured party in the capital structure --

3 THE COURT: Right.

4 MR. HANSEN: -- and they sit at the top. And also
5 because of this significant overcollateralization that that
6 everybody is referring to: seventy billion dollars of asset
7 value.

8 THE COURT: That was a big cushion by traditional --

9 MR. HANSEN: It is.

10 THE COURT: -- measurements, right?

11 MR. HANSEN: It is. It is, Your Honor.

12 But again, I guess to step back, there was nothing
13 untoward from the lender's perspective about saying, listen,
14 I'm prepared to loan you money and we're going to put a
15 materiality qualifier in here that, in the situation that you
16 hypothesize, that we might have massive post-petition wildfire
17 liabilities that are not capable of mitigation or being dealt
18 with from a regulatory or bankruptcy court perspective, the
19 lender should have a right to a default in that situation.
20 They can't just make a loan and say, you know what, you can
21 have our money and it really never matters --

22 THE COURT: Okay. I --

23 MR. HANSEN: -- what happens in the future.

24 THE COURT: -- gotcha.

25 MR. HANSEN: Yeah.

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1 THE COURT: I mean, look, it's my job to figure out
2 today or whenever to accept that and take the consequences and
3 say, you got yourself a deal or not, or what to do about it.
4 So you're explaining it adequately.

5 MR. HANSEN: Yep.

6 THE COURT: I got it.

7 MR. HANSEN: Understood, Your Honor. The other one
8 was, I just wanted to touch quickly on the 503(b) claims. I
9 know that that kind of led to the discussion of the
10 post-petition wildfire liabilities. But obviously, to the
11 extent people make substantial contribution claims and the
12 debtor is still a going concern, and it wants to confirm a plan
13 and leave bankruptcy, it needs to pay those claims in cash.
14 Those are administrative --

15 THE COURT: No, and I think Mr. Zumbro clarified what
16 was -- frankly, it was what I understood anyway. And that is
17 that if somebody does hit the jackpot and get a 503(b) claim
18 they get -- they're entitled to whatever they're entitled to.

19 That shouldn't trigger a default because it doesn't
20 harm anybody, it doesn't impair. It's not a material impact,
21 it's just another claim in the pipeline for post-petition
22 disposition, right?

23 MR. HANSEN: That's right. Yes, Your Honor.

24 THE COURT: Okay.

25 MR. HANSEN: That's right.

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1 THE COURT: But the point is because it was the
2 subject of some position by the fire victims and the committee
3 and from the debtor and your clients that, no, then okay.
4 That's the answer. I'm not negotiating, I'm just making sure
5 we're clear on what the question is.

6 MR. HANSEN: Absolutely, Your Honor. And part of my
7 job is to help you make sure that we get all the information on
8 the table so that you know where it is and know what it says,
9 and the other part is to advocate on behalf of approval for the
10 DIP, so.

11 THE COURT: Well, you might not be able to get them
12 all to advocate that, but you can at least -- they can be
13 heard.

14 MR. HANSEN: With respect to -- you had raised, I
15 guess, a quick question. You had made a comment that, what
16 about -- like the tort objection that says, please don't
17 enforce on utility assets first. That obviously would be a
18 form of marshaling, and obviously the DIP order contains a
19 provision that is a marshaling waiver with the exception of the
20 avoidance actions proceeds which are now put second.

21 And the bank agrees with you, Your Honor. If we're
22 in a position where the proceeds of avoidance actions are our
23 collateral of last resort and we're actually looking to them,
24 we are in a --

25 THE COURT: Well, last time I checked, if a debtor is

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1 solvent, the debtor might not have any avoidance actions.

2 MR. HANSEN: Agreed. Agreed, Your Honor. So with
3 respect to the enforcement of the utility assets, we -- it's
4 not -- so we have a marshaling waiver but we also have an
5 express provision in the DIP order and we've had discussions
6 with the CPUC and we understand the regulatory regime, that if
7 we ever need to exercise remedies on utility assets, we have to
8 go through the CPUC and the regulatory --

9 THE COURT: But that's the paragraph 35 --

10 MR. HANSEN: It is --

11 THE COURT: -- right?

12 MR. HANSEN: -- and it functions -- and it
13 essentially functions in some respects almost like a
14 marshaling-type of procedure because it may be a while before
15 we're granted the ability to actually exercise and foreclose on
16 that collateral.

17 Again, with the amount of oversecurity in this case,
18 I would assume if we were in a DIP default scenario, the
19 debtors would be able to refinance us with someone who might
20 ignore that --

21 THE COURT: You think so, huh?

22 MR. HANSEN: -- default? You have seventy billion
23 dollars of excess collateral you would think that they would be
24 able to do it. I would also think that the --

25 THE COURT: Like call a hard money lender maybe, huh?

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1 MR. HANSEN: Exactly. Well, it's an interesting
2 point you raised, Judge, because when you think about hard
3 money lenders, right, this DIP loan is fairly innocuous from
4 a --

5 THE COURT: I get these ads on my phone. I can get
6 somebody online, I can get that second mortgage.

7 MR. HANSEN: Me too. I could probably get a third
8 one too.

9 But what's interesting is that there was no -- you
10 and I have both been involved in cases in the course of our
11 careers where you have pre-petition secured lenders who are
12 dictating the control of the debtors' case and effectively
13 saying, you're not going to get credit any place else. I have
14 a lien on all your assets, you have to come through me if you
15 want new financing, and I have a preconceived notion about how
16 your case is going to proceed.

17 That's not what's happened here at all. And so this
18 addresses a number of the objections. There are some lenders
19 who were pre-petition revolving lenders to the debtor who are
20 in the DIP, but there are also many, many --

21 THE COURT: But they're only in the DIP as DIP
22 lenders.

23 MR. HANSEN: They're only in the DIP as DIP lenders,
24 and there are many, many other --

25 THE COURT: But that cuts both ways because you --

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1 not you, I think someone in one of the briefs, they keep
2 reminding me that this is like -- this is normal, but it isn't
3 normal. And what isn't normal is this enormous leverage, this
4 seventy billion or some other number of assets that are largely
5 free and clear of liens, a DIP loan, if it's approved, will be
6 less than one-tenth.

7 So on a loan to value ratio, there is a cushion as
8 big as you can imagine. But that's exactly why some of these
9 Draconian things, like seven-day notice of relief from stay,
10 don't cut -- sit very well with me because they're not
11 necessary.

12 But I'm telling you that therefore every time people
13 like you and Mr. Zumbro tell me this is like the typical, but
14 it's not typical for a lot of reasons. And the other one is,
15 the obvious one, are these staggering tort liabilities that
16 don't exist in the kinds of cases that everybody cites in the
17 papers, right?

18 I mean, maybe the people in the Puerto Rico disaster
19 are -- whatever -- however that's being resolved, and maybe
20 some other major tort disasters. But I don't imagine that the
21 great big cases in other districts around the country are
22 typical of this for that reason.

23 So it's all those things you say. It's free assets,
24 DIP lender dictating everything. It's why we're different
25 here.

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1 MR. HANSEN: True. Precedent counts in two
2 directions, though, Your Honor. Precedent counts from a legal
3 perspective but precedent counts from a factual kind of benefit
4 of the bargain perspective as well.

5 And when DIP lenders enter into a DIP financing
6 market, whether it has a bunch of zeros on the end of the loan
7 or fewer zeros, it's the same negotiation. And in that
8 negotiated situation you have, what you get is an integrated
9 DIP loan at the end, right? It's been give and take on
10 everything.

11 THE COURT: Right.

12 MR. HANSEN: You heard Mr. Zumbro talk about all the
13 events of default and lien baskets and the indebtedness
14 baskets, and everything that's kind of been packaged into the
15 loan. This seven-day notice period, I will tell you I've seen
16 it as short as three regular calendar days, five regular
17 calendar days. I haven't really ever seen it beyond that.

18 With the fact that we can't get --

19 THE COURT: To my --

20 MR. HANSEN: -- with the fact that we can't get to
21 utility assets until we have a discussion with the CPUC and get
22 granted relief from that perspective, the point about the seven
23 days is it gives everybody the opportunity on a notice out to
24 the world to come before Your Honor and say, this isn't right.
25 You shouldn't allow them to do this.

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1 And the push and pull --

2 THE COURT: But it would be nice if that were the way
3 it were to stay.

4 MR. HANSEN: Yeah, but that's --

5 THE COURT: But only thing, you know I'm going to
6 tell you this, all you are allowing the Court to do on seven
7 days' notice is determine whether there's an event, not whether
8 it was staged to be modified.

9 MR. HANSEN: But that then forces the benefit of the
10 bargain --

11 THE COURT: Well --

12 MR. HANSEN: -- of the debtors -- just, Your Honor,
13 in a highly competitive process. This wasn't JPMorgan Chase as
14 agent for the pre-petition revolver saying to the debtors, I'm
15 the lender of last resort for you. You'll do it my way. The
16 debtors had lots of lenders come and make proposals to them.

17 THE COURT: Okay.

18 MR. HANSEN: And then ours needed to be secured as
19 everyone else's did. We would never have made this loan on an
20 unsecured basis for many of the reasons that you've stated.

21 THE COURT: No, I understand.

22 MR. HANSEN: And when you look at it from that
23 perspective and you say, okay, if you have a highly negotiated
24 and integrated credit agreement which gives you sufficient room
25 to maneuver with -- inside of events of default including this

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1 materiality clause that we just went through, which I think is
2 fair for the lender. It is completely unfair to say to the DIP
3 lenders in that situation, okay, we have a lot of cushion in
4 these events of default, but nevertheless we've tripped one.
5 And we have not been able to work it out with you in a way
6 where we can either refinance you, get an amendment, get a
7 waiver, get a forbearance, whatever might come.

8 We're now at the point where you have said, I need to
9 go exercise rights on my collateral, which my credit agreement
10 gives me. The burden then shouldn't be, well, you're just an
11 ordinary lift stay party.

12 The burden at that point should be in the reverse,
13 which is come in and explain to the Court why an event of
14 default has not occurred, why the lender may be misreading it,
15 why there's a misinterpretation with respect to the provision.
16 But to say to the lender, again, who has put fresh capital into
17 the company, and I don't want to lose sight of the fact that
18 that capital, despite the fact that Mr. Zumbro says, well, you
19 know what, we did a good job. We didn't use the full limit in
20 the interim period.

21 It's there for a purpose beyond just the ability to
22 borrow to its full amount. It's also there for the purpose of
23 demonstrating to, candidly, California, the country, everywhere
24 else here that from a contract counterparty on so many levels,
25 that this company is stable. It has access to financing.

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1 So if we're in a position where we have a default and
2 the bank believes that, and the DIP lenders believe that, and
3 we have a dispute over it, we're going to bring it in front of
4 you. It's unfair at that point to then say to the lenders,
5 well, the benefit of your bargain was the following but now you
6 have to go into an entirely new standard.

7 THE COURT: And do what? So what's the worst that
8 could happen if we don't have an automatic seven-day
9 argument -- whatever my word is. At the end of seven days, the
10 bankruptcy court's out of the discussion. What's an
11 alternative? Let's again talk about the real world.

12 MR. HANSEN: Yeah.

13 THE COURT: Right upstairs we have an Article III
14 judge who feels very strongly about what this utility is up to,
15 and has publicly stated a lot of things. Again, it's his job
16 not mine. I do my job here.

17 What if he decides, I don't like management. I'm
18 going to order appointment of a trustee instantly. I'm going
19 to withdraw the reference of that crazy bankruptcy judge, and
20 I'm going to appoint a trustee. What happens then? No stay?
21 No relief? No nothing? Just seven days to determine if
22 there's an event of default?

23 Again, I'm not here to criticize my upstairs
24 colleague. It's his job. But it could happen.

25 MR. HANSEN: That could happen, and --

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1 THE COURT: And that -- so why should conversion to
2 Chapter 11 trigger seven days to determine whether it's been
3 converted to chapter -- a trustee, Chapter 11 trustee's been
4 appointed, and that's -- and then we're done. That's the only
5 inquiry.

6 MR. HANSEN: Because that's the credit risk, Your
7 Honor.

8 THE COURT: I know it's the credit risk.

9 MR. HANSEN: Credit risk --

10 THE COURT: But it shouldn't be a credit risk with
11 this eighty billion dollar cushion.

12 MR. HANSEN: Then the pricing may need to change.
13 So --

14 THE COURT: Maybe it would. Maybe it --

15 MR. HANSEN: -- from a pricing perspective, right,
16 everything is a balance from risk, right? And so if the risk
17 that the lenders are prepared to take is that they are willing
18 to finance this management team, this infrastructure, this
19 company as it sits here today but a judge upstairs says, you
20 know what? I'm going to change that landscape for you. I'm
21 in -- I am effectively taking away the governance of this
22 company and I'm putting it in front --

23 THE COURT: Well, he --

24 MR. HANSEN: -- in the hands of a trustee.

25 THE COURT: -- has that potential.

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1 MR. HANSEN: Absolutely.

2 THE COURT: So do I, actually, as you know.

3 MR. HANSEN: Of course.

4 THE COURT: I have that same option on a proper
5 showing, and I don't mean to imply that the district judge
6 wouldn't have a proper basis.

7 MR. HANSEN: Oh, no --

8 THE COURT: It's just that it could happen.

9 MR. HANSEN: -- not at all. Not at all, Your Honor.
10 And we understood that. We took that into consideration when
11 we evaluated this, which is why we put an event of default in.

12 THE COURT: Right.

13 MR. HANSEN: And as you know from a lending
14 perspective, events of default allow you to have rights.

15 THE COURT: Well, but the thing that jumped out at me
16 is the conversion. I mean, the -- I'm sorry, the Chapter 11
17 trustee.

18 MR. HANSEN: Uh-huh.

19 THE COURT: I don't view the risk of this debtor
20 going to Chapter 7 to be a high risk because of all the
21 consequences. But I can't ignore the potential and the risk of
22 Chapter 11 trustee consequence.

23 And I'll tell you what. I don't want to take the
24 rest of the morning. It's on my mind and I might just not be
25 willing to go along with that, and I'll let you know when I

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1 make a decision on it.

2 MR. HANSEN: Enough said, Your Honor.

3 THE COURT: I want to hear what everybody has to say
4 about it.

5 MR. HANSEN: Absolutely --

6 THE COURT: And this is no criticism of the lenders
7 or their good faith or anything. It means somebody's got to do
8 a little fixing of some problem here before --

9 MR. HANSEN: It's not taken that way, but I -- just,
10 I can't move on from the point without emphasizing that events
11 of default exist to enable people to have rights.

12 THE COURT: Yeah.

13 MR. HANSEN: Once they have those rights there's
14 usually a negotiation to resolve --

15 THE COURT: That's right.

16 MR. HANSEN: -- whatever the situation is.

17 THE COURT: That's right.

18 MR. HANSEN: And so that may be, at that point in
19 time when an event default occurs, a repricing of the loan --

20 THE COURT: Well, there might be a repricing of the
21 loan if the judge isn't prepared to sign off on something as
22 drastic as -- that could happen through the vagaries of the
23 case.

24 MR. HANSEN: Agreed, Your Honor, but I will put in
25 addition to repricing, you're now lending to somebody entirely

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1 new. And so there may be no loan.

2 And so that's another issue, which is to say if
3 there's a Chapter 11 trustee, that's a new negotiation about
4 the financing that someone would extend --

5 THE COURT: No. Look, you're missing the point.
6 You're missing the point. I fully accept all the negotiation
7 you've described, and you've described it very ably.

8 The question is, I'm the bankruptcy judge who has to
9 decide this morning, maybe, whether to approve this DIP
10 financing. I then have to decide what does that mean if
11 something -- not the catastrophic wildfire, but rather
12 something like a district judge deciding to throw management
13 out.

14 And is that the kind of risk that I think is
15 appropriate for the bankruptcy court to be incurring when maybe
16 I say to the lenders, you'll have to go back and revisit just
17 when and how that risk is materialized. In other words, maybe
18 it's not seven days' telephonic notice, maybe it's thirty days
19 or forty-five days to have a determination on whether stay of
20 relief should be granted or something. I don't want to
21 negotiate with you because I don't have anything to go on.

22 MR. HANSEN: I don't have anything --

23 THE COURT: But I also read in the paper. I get
24 people that want the reference withdrawn so that Judge Alsup
25 will get this decision from me. And I don't call him up and

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1 discuss with him what I'm doing on a DIP financing motion, but
2 the fact of the matter is, if he makes a decision that has such
3 consequences, then we just need to know what does that mean.

4 MR. HANSEN: Of course. And I guess what I'm saying
5 to you, Your Honor, is this is a fully syndicated loan. We
6 have more than fifty financial institutions who have syndicated
7 into the loan.

8 And so were we to change the risk that we sold the
9 loan on out to all of those institutions to be, you now have to
10 consider essentially being forced to lend to a trustee as
11 opposed to having your rights in an event of default situation.

12 THE COURT: I don't think that's fair to say, lend to
13 a trustee. I didn't say that they couldn't declare a default,
14 I said the question is could they get automatic relief from
15 stay and be out of --

16 MR. HANSEN: Well, if they --

17 THE COURT: -- no -- and be out of the bankruptcy
18 court's role, whether it be the district judge or me or anyone.

19 The way you've described it and explained it to me
20 and the way I've read the documents, if the judge decided or if
21 I decided to direct the appointment of a Chapter 11 trustee, of
22 course I don't expect your clients would have to loan any new
23 money.

24 The question is whether they'd have the right to
25 declare a default and pull the trigger on the event of your

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1 trigger default, whatever that word is in the loan agreement,
2 that's all. I just have to decide and think about whether
3 that's appropriate at this point or not.

4 MR. HANSEN: Yeah --

5 THE COURT: That's what I'm struggling with, to be
6 honest with you.

7 MR. HANSEN: I understand. No, I understand, Your
8 Honor.

9 THE COURT: Okay.

10 MR. HANSEN: I'm not --

11 THE COURT: I don't care about the 50(c) waivers and
12 the lien avoidance. Those are nonissues.

13 MR. HANSEN: I get -- I understand, Your Honor, and
14 all I'm trying to point out is that we have a, like, a very
15 broadly syndicated loan, and it's a risk issue. And I say
16 repricing, but I also have to talk to the clients and to all
17 the syndicated members who bought the loan because they might
18 say, no, I'm not prepared to continue to be in that loan, and
19 then the risk profile increases for others --

20 THE COURT: Okay.

21 MR. HANSEN: -- at a point where people might say
22 they won't do the loan at all. And that's something we would
23 have to deal with.

24 So my only point to the Court is that, for a secured
25 lender to be told, listen, you might not get access to the

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1 collateral in the event of default that you negotiated for when
2 something like a trustee is appointed. That's, in essence,
3 making them a forced lender with the amounts that they've
4 already given. So I just -- I don't mean to -- I don't mean to
5 parry with you on the point, but it's something that's very
6 important that we're going to have to take back to the lenders.

7 THE COURT: Okay.

8 MR. HANSEN: All right. Thank you, Your Honor.

9 THE COURT: All right. So I've used up far more time
10 than I allocated, but I guess counsel for the creditors'
11 committee still wants to be heard briefly. So let's make it
12 very brief -- or the unsecured creditors' committee, then we'll
13 go to the other side.

14 MR. KRELLER: Good morning, Your Honor. Thomas
15 Kreller of Milbank on behalf of the official unsecured
16 creditors' committee. And I'm running the last leg of this
17 relay team and I will be fast to make up time for you.

18 THE COURT: I was surprised that we didn't even hear
19 from you until yesterday, actually. I was amazed that I
20 didn't get anything on the merits that even expressed your view
21 on the financing until after the fact and say, we disagree with
22 the fire victims' committee on one point. That was like, why
23 can't they tell me more about their position?

24 MR. KRELLER: Well, Your Honor, I -- so let's back up
25 for a moment. The final DIP approval hearing was originally

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1 set for February 27th. In advance of that hearing we filed a
2 reservation of rights, which essentially said --

3 THE COURT: Right. And I gave you an extension to
4 file until Friday, and you didn't.

5 MR. KRELLER: Correct, Your Honor. We didn't
6 because --

7 THE COURT: So I'm sitting there wondering, where is
8 the committee? One committee weighs in with a long brief, the
9 other committee doesn't say a word. So I'm kind of wondering
10 what is going on. So it would have been nice to know.

11 MR. KRELLER: Your Honor, we don't oppose the DIP
12 financing.

13 THE COURT: I know.

14 MR. KRELLER: We spent the time -- we spent the extra
15 time when the hearing got continued for two weeks, as we had
16 hoped we would be able to, working with the debtors and their
17 advisors, conducting our legal and financial --

18 THE COURT: You want a seven-day trigger if the judge
19 decides to direct the appointment of a Chapter 11 trustee?

20 MR. KRELLER: Your Honor, we would be happy to see
21 that provision out. What --

22 THE COURT: Tell Mr. Hansen that.

23 MR. KRELLER: I certainly will, Your Honor. I think
24 he knows, and I'm happy for anything else that he can take out
25 of his hide.

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1 But what our review told us, Your Honor, and part of
2 the reason that it took the time that it did is, to your point,
3 this isn't normal. We can say things like, these are market
4 provisions or we see these in big DIP loans. This isn't a
5 normal situation --

6 THE COURT: It isn't.

7 MR. KRELLER: -- this isn't a normal DIP loan.

8 THE COURT: Right.

9 MR. KRELLER: And so even the review of it to some
10 degree was unusual. We're not looking at things like lien
11 review periods and roll ups and all the things you see in these
12 kind of cases --

13 THE COURT: Right.

14 MR. KRELLER: -- where you have pre-petition --

15 THE COURT: No. I understand that that's a well --
16 important point, obviously.

17 MR. KRELLER: And so to some degree, obviously we
18 reviewed the terms in the documents carefully. And our role at
19 that point, we believe, was to decide whether we believe that
20 the DIP was fair and appropriate.

21 And to some degree that puts even more stress than
22 usual on the marketing process. Because if you believe you
23 have a robust marketing process, it makes it a little bit
24 easier to reach the conclusion that the integrated financing
25 package, which this DIP represents, is fair and appropriate.

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1 Are there things that -- are there things that we
2 don't like that we would try to trade off other things? Sure,
3 and we've had some of those discussions and there have been
4 some adjustments.

5 But at the end of the day it's an integrated package
6 and you win some and you lose some, and there are trade-offs to
7 be made. And we think that the terms ultimately of the
8 integrated package and the benefits to the estate of what we
9 view as a relatively debtor-friendly DIP loan without a lot of
10 the problematic types of provisions that you see in other
11 cases --

12 THE COURT: I know. I think Mr. Hansen made the
13 point there that -- I don't disagree with you on that one.
14 It's this other -- the brinkmanship of what happens if there's
15 a reason to appoint a trustee, for example.

16 MR. KRELLER: Understood, Your Honor. And I think --

17 THE COURT: It sort of says to the judge, we're going
18 to paint you into a corner, or you don't have a choice here.
19 It's my way or the highway. Some people are told don't do that
20 with judges.

21 MR. KRELLER: Your Honor --

22 THE COURT: I'm not taking it personally; I'm just
23 telling you that I'm not the only judge in this case at the
24 moment.

25 MR. KRELLER: Understood.

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1 THE COURT: Okay.

2 MR. KRELLER: And look, just to be completely frank,
3 I think one of the arguments that you or another judge would
4 face in that scenario is someone would say, you can't appoint a
5 Chapter 11 trustee because it's going to default the debt. And
6 you're right. That puts that issue in your lap.

7 And we don't like that, we like for that issue not to
8 be out there. But it is part of the integrated financing
9 package --

10 THE COURT: Well, I understand. Yeah.

11 MR. KRELLER: -- balance.

12 THE COURT: Part of the integrated package, so.

13 MR. KRELLER: And I think --

14 THE COURT: Therefore what?

15 MR. KRELLER: And I think if we confronted that
16 issue, as in many things in the bankruptcy world, there's a
17 negotiation to be had there. So to some degree, I think it
18 defers that issue. It's an issue that would be great if we
19 could take it off the table and not have that concern and
20 operate under that potential --

21 THE COURT: But if there was a default, there would
22 be nothing to negotiate because -- unless the bank said, well,
23 we won't enforce the seven-day calendar day trigger. I mean,
24 come on. That's not --

25 MR. KRELLER: Your Honor, I don't want to -- I

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1 certainly don't have any desire to argue on behalf of the
2 banks, but I don't know that in this kind of a case with this
3 kind of collateral and in this environment, that that just
4 immediately flips to, we're exercising all of our remedies. I
5 do think people come to the table in that world.

6 THE COURT: So do I.

7 MR. KRELLER: But you're right --

8 THE COURT: So do I. But you know who is no longer
9 at the table? The bankruptcy court. Again, not personal.

10 The bankruptcy court, because the event has occurred,
11 and I just used -- again, I don't make this up. I wasn't
12 planning to read in the newspaper that some other people think
13 unwell of the management of the debtor. And suddenly that
14 might happen. And I'm not -- and it may not happen. Hopefully
15 it won't happen, but it could happen.

16 And we're not talking about another wildfire, we're
17 talking about a legal event such as what I told you about, so.

18 MR. KRELLER: Understood, Your Honor.

19 THE COURT: Okay.

20 MR. KRELLER: And I appreciate the issue, and it
21 is -- it's a concern and it's something we thought about. And
22 as I said, it's a comprehensive financing package that came out
23 of a marketing process that we think was robust and
24 appropriate.

25 THE COURT: Okay.

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1 MR. KRELLER: And we think the package is the right
2 one for the debtors to pursue. But to the extent that you can
3 improve it for us, I'd be happy to see that happen as well,
4 Your Honor.

5 THE COURT: Oh, come on over to our side now. I'm not
6 on a side.

7 MR. KRELLER: Understood. Thank you, Your Honor.

8 THE COURT: I don't think we need to take a break yet.
9 I'm ready to hear from the tort committee, the tort claim
10 committee.

11 Ms. Dumas, are you making the argument today? Or who?
12 Someone.

13 MS. DUMAS: Your Honor, Cecily Dumas of Baker &
14 Hostetler on behalf of the official committee of tort
15 claimants. I have conferred with the other objecting parties,
16 and with the Court's permission, I'd like to go last of
17 the three objecting parties.

18 THE COURT: I only had two -- I only had two timely
19 objections, but we have the SLF fire victims and --

20 MS. DUMAS: Yes, sir. And I believe Mr. Esserman's
21 client.

22 THE COURT: Yes. I'm sorry, I'm the one that made the
23 mistake of forgetting him and the U.S. Trustee, and I added
24 them to the list.

25 MS. DUMAS: Yes.

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1 THE COURT: Okay. Mr. Laffredi, does the U.S. Trustee
2 want to be heard today, too?

3 MR. LAFFREDI: No, Your Honor. Any of the remaining
4 objections that were not already ruled on would be issues that
5 would be raised by the committee, so we have nothing to add.

6 THE COURT: Okay. See, that's why I left you out of
7 the docket text by accident.

8 Okay. Mr. Esserman, do you want to be heard then
9 first?

10 MR. ESSERMAN: I do, Your Honor.

11 THE COURT: Okay. Yes, I was preparing for the
12 hearing and it was early yesterday morning, I won't tell you
13 what time, when I decided to put the word out, and I just got
14 all finished with it and I forgot you and forgot the U.S.
15 Trustee. I got the reminder later in the day and you got
16 invited back to the oral argument.

17 MR. ESSERMAN: That's okay, Your Honor. I understand
18 I'm very forgettable.

19 THE COURT: No, you're not very forgettable, except
20 that I forgot you when I prepared that docket text.

21 MR. ESSERMAN: No problem, no problem. Thank you.

22 For the record, Sander Esserman on behalf of various
23 public entities. I'll just say it once. We've got another
24 matter coming up after this.

25 THE COURT: I know you do.

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1 MR. ESSERMAN: On behalf of the town of Paradise,
2 Butte County, Sonoma County Sanitation District, the Sonoma
3 County Water Agency, Sonoma County Development Commission, the
4 Sonoma County Preservation Open Space District, Sonoma County
5 itself, the city of Santa Rosa, Yuba County, Nevada County,
6 city of Clear Lake, Lake County, Mendocino County, city of
7 Napa, Napa County, Calaveras County Water District, all victims
8 of the camp in the 2017 wildfire damage.

9 Your Honor, we did timely file an objection. I think
10 we might --

11 THE COURT: You did, that's correct.

12 MR. ESSERMAN: -- have been the only one that timely
13 filed an objection.

14 THE COURT: No. I gave the Tort Committee delayed
15 time.

16 MR. ESSERMAN: Right.

17 THE COURT: And the U.S. Trustee filed an early one.

18 MR. ESSERMAN: No one gave us any extra time, but
19 that's okay. Let me --

20 THE COURT: You want more time?

21 MR. ESSERMAN: No, I don't need any more time.

22 THE COURT: Do you want to go and renegotiate the DIP
23 agreement?

24 MR. ESSERMAN: I would love to. Let me try and focus
25 my comments specifically on the 503, because that was one of my

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1 objections.

2 THE COURT: The 503?

3 MR. ESSERMAN: Yes, the 503 issue. My objection was
4 on the carve-out. And what the carve-out did, it preserved
5 twenty-five million dollars for U.S. Trustee's fees and,
6 basically, the debtors' professionals and the committee's
7 professionals.

8 THE COURT: Right.

9 MR. ESSERMAN: And what my objection was simply, and
10 you heard Mr. Zumbro say, someone can make a 503(b)
11 application -- in fact, one of the objections to my motion on
12 behalf of the Public Entities for a committee is you can always
13 make a 503(b) application.

14 THE COURT: No, I'm aware of that.

15 MR. ESSERMAN: So my objection as to the DIP financing
16 motion is that there's something that Your Honor is very
17 familiar with called a carve-out. And the carve-out is twenty-
18 five million dollars for the various professionals. It is not
19 subject -- not something that was internally negotiated as to
20 who gets that twenty-five million.

21 My point on my objection was, if someone has a 503(b)
22 application or there's a trustee and the trustee has an
23 application, they should be part of that twenty-five million
24 dollar carve-out. Not that they're not going to get paid
25 otherwise, but what's the whole purpose of having a carve-out?

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1 Why do they put a carve-out in there? There was a reason they
2 put a carve-out in there. We all know there are reasons for
3 DIP carve-outs.

4 THE COURT: Well, but with the go to the loan-to-value
5 ratio, is it really a necessary carve-out, a realistic one?

6 MR. ESSERMAN: Well, then get rid of it.

7 THE COURT: Well, no, that isn't what I asked you. In
8 other words, if you are unsuccessful in getting an official
9 committee, and therefore, for your group you do want to try to
10 get compensated for your clients under 503(b)(3) and (4), and
11 if the Court allows that amount, is there any risk that you
12 won't get paid it, under the current numbers, if we're dealing
13 with five-and-a-half billion against seventy billion of asset
14 value?

15 MR. ESSERMAN: I get it and understand it, but that
16 goes back to why there's a provision in the agreement in the
17 first place.

18 THE COURT: Well, I know.

19 MR. ESSERMAN: And that's what I'm focusing on. As a
20 practical reality, you're probably right. As a practical
21 reality, perhaps we out to strike through the whole twenty-five
22 million dollar carve-out because there's not a realistic
23 possibility that someone's not going to get paid on this.

24 But someone made a determination that there should be
25 a twenty-five million dollar carve-out. And somebody, my guess

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1 is not the DIP lender, made a decision as to who should share
2 in that twenty-five million and who should be limited and who
3 should not be in that.

4 One of the limitations was 100,000 dollars for fees, a
5 cap for fees of a trustee. I think that that's --

6 THE COURT: Well, that's meaningless.

7 MR. ESSERMAN: Meaningless.

8 THE COURT: Meaningless.

9 MR. ESSERMAN: We all know that.

10 THE COURT: But the Chapter 7 trustee's fees has been
11 on our guidelines for thirty years in the northern district.
12 Long before Delaware had the guidelines, we had one --

13 MR. ESSERMAN: Right.

14 THE COURT: -- with the carve-out for the U.S. Trustee
15 and the Chapter 7 case trustee. So what's different here is
16 the 100,000 for the --

17 MR. ESSERMAN: That's right.

18 THE COURT: -- Chapter 11 trustee, which is
19 meaningless.

20 MR. ESSERMAN: And I think it should be stricken.

21 THE COURT: What good does it do? I mean, you've
22 heard Mr. Hansen argue why I shouldn't mess with the delicate
23 balance of the financing. What's the point of striking it?
24 How is it going to affect your client by one dollar?

25 MR. ESSERMAN: This has nothing to do with the lender.

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1 THE COURT: Well, I understand, but --

2 MR. ESSERMAN: The lenders carve out twenty-five
3 million dollars.

4 THE COURT: How does it have anything to do with your
5 client, for the same reason? I mean --

6 MR. ESSERMAN: Well, they're --

7 THE COURT: -- this is not an undersecured creditor.
8 It's a far oversecured creditor.

9 MR. ESSERMAN: We agree with that, but it's the whole
10 purpose of why it's in there for the first place. And if it's
11 in there for a purpose in the first place and it is in there,
12 why try and micromanage that twenty-five million dollars?

13 THE COURT: Well, the case law has been pretty
14 supportive of the lender's decision to how the lender wants to
15 use its collateral, right? I mean, there are lots of recent
16 cases in recent years that support the carve-outs, don't they?
17 As much as they might be offensive to people who aren't
18 carve-out beneficiaries, the caselaw does seem to support the
19 content.

20 MR. ESSERMAN: But in this case, and this really
21 probably isn't even worth arguing because it's a micro issue,
22 but what you do have is an argument here that one order of the
23 bankruptcy court awarding fees has dignity or priority over
24 another order of the bankruptcy court awarding fees. And
25 that's where the -- that's where the allocation within the

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1 carve-out occurs. And that was our point.

2 THE COURT: Well, I think if we had a case where it
3 really made a difference, I guess I'd understand that
4 somebody's dignity is going to be impugned, but if everybody is
5 going to get paid anyway, I don't know that it matters.

6 MR. ESSERMAN: Well, maybe we can strike that whole
7 carve-out provision and trade it for some of these other points
8 that have been discussed which we're fully supportive of.

9 So look, we understand there's a DIP loan. We
10 understand that it's needed. We also understand that this is a
11 highly unusual case. I've never seen a situation where the DIP
12 loan hasn't been modified by a court in some respects, and as a
13 general rule that somehow works its way back into the magic of
14 the DIP loan. I guess we'll find out here.

15 We are supportive of your other comments made,
16 although they were not made as an advocacy, they were made as a
17 question. But we also did object to the issue of the Chapter 5
18 causes of action, which we think ought to be maintained for the
19 whole creditor body.

20 THE COURT: Again, do you agree with me that it's
21 probably much ado about nothing --

22 MR. ESSERMAN: We sure hope so.

23 THE COURT: -- at the moment if we have a solvent
24 estate --

25 MR. ESSERMAN: We sure --

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1 THE COURT: -- which we're told we have a solvent
2 estate. And if the situation changes and whatever occurs that
3 makes insolvency a known commodity, a known fact, I don't know
4 that that revives some avoidance actions that might not have
5 existed on the petition date, right?

6 MR. ESSERMAN: I agree, but it is unusual, it is
7 contrary to this Court's guidelines on DIP loans.

8 THE COURT: It is.

9 MR. ESSERMAN: We did note that. This is --

10 THE COURT: Well, it is. I noticed it too.

11 MR. ESSERMAN: -- an unusual case.

12 THE COURT: I wrote those guidelines about a hundred
13 years ago, or helped write them. But the same with 506(b)
14 waivers too, where do they go? 506(c) waivers, excuse me.

15 But anyway, let's go back to the rest of your
16 objection.

17 MR. ESSERMAN: That was it, Your Honor. That was it.
18 Those are the important points.

19 THE COURT: Okay, all right.

20 MR. ESSERMAN: Thank you.

21 THE COURT: So is it Mr. Singleton that's going to
22 appear for the fire victims? Is that you, Mr. Singleton?

23 MR. HAWKINS: Mr. Singleton is in the courtroom, Your
24 Honor. I'm Chris Hawkins from Sullivan Hill, counsel to the --

25 THE COURT: Okay, same group.

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1 MR. HAWKINS: Exactly. Chris Hawkins of Sullivan Hill
2 on behalf of the SLF fire claimants who number approximately
3 3,500.

4 And I apologize for the late objection, Your Honor,
5 but it was inspired --

6 THE COURT: No, I --

7 MR. HAWKINS: -- by testimony given at the 341 last
8 week.

9 THE COURT: No, that's okay. I haven't complained
10 about it.

11 MR. HAWKINS: Okay. Your Honor, in regards to our
12 first point here about finishing paying the Butte victims who
13 date back to 2015, one of the debtors' themes in this case,
14 obviously, is alleviate the suffering on behalf of the fire
15 victims and help them get on with rebuilding their lives and
16 the communities that were destroyed. And one way to do that
17 would be to fund those final Butte fire settlements that were
18 made by PG&E on the eve of bankruptcy and then not paid.

19 The remaining Butte victims have suffered longer than
20 any of the other groups here, and the final sort of insult
21 occurred on the eve of bankruptcy filing --

22 THE COURT: Right, I'm sure.

23 MR. HAWKINS: -- when they had submitted the --

24 THE COURT: I'm sure it did.

25 MR. HAWKINS: -- settlements they had agreed to, the

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1 Butte victims are sitting there waiting for their checks, and
2 instead they find out that they're not getting checks, the
3 bankruptcy has been filed, and millions of dollars in severance
4 payments had gone out the door.

5 The request to fund those final settlements, there's a
6 couple different numbers in the pleadings that range between --

7 THE COURT: Well, it's about nine million dollars.

8 MR. HAWKINS: Nine million and I think the high is
9 twenty. If you picked the midpoint of that range at fifteen
10 million, Your Honor, and you measure that against the DIP
11 facility here, that's literally three-tenths of one percent of
12 the DIP facility. If you measure it against the seventy
13 billion in total estimated liabilities --

14 THE COURT: Well, but I think you're mixing things. I
15 don't think -- you're not asking me to tell the DIPs they have
16 to do anything, right?

17 MR. HAWKINS: We're asking you --

18 THE COURT: I think what you're saying is, because I'm
19 being asked to approve the DIP facility, why don't I also
20 approve this oral -- not oral, I don't mean oral, but this
21 request by your clients to get their claims paid.

22 MR. HAWKINS: Correct. Condition the DIP facility on
23 finishing --

24 THE COURT: That's an understandable request, but it
25 doesn't seem to be linkage, there's no linkage to the DIP

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1 facility. It's just the timing.

2 MR. HAWKINS: That money is going to be used for
3 various purposes, obviously, and we maintain it could be used
4 for this purpose.

5 THE COURT: Well, but what I'm getting at is -- were
6 you here at the prior hearings, the first day hearings?

7 MR. HAWKINS: I was.

8 THE COURT: Because we had a number of the other first
9 day motions, various payments to various people, and critical
10 vendors and the operational integrity and all these other
11 things. But the debtor hasn't, to my knowledge, asked to pay
12 any pre-petition tort claims.

13 But now you're asking -- let me try it a different
14 way, Mr. Hawkins. If there were no DIP facility, you certainly
15 would have the right to ask to have your claims paid. The
16 question is, what is the linkage between that request and the
17 DIP facility? And it's hard for me to see it.

18 MR. HAWKINS: It's simply one of timing, Your Honor.

19 THE COURT: Yes.

20 MR. HAWKINS: You're about to approve money that's
21 going to be used for a variety of purposes, and we're asking
22 you to condition it upon the payment of these last settlements.

23 And these are unique in that they're -- the testimony
24 at the 341 last week was that PG&E had collected somewhere in
25 the neighborhood of 900 million dollars in insurance proceeds.

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1 THE COURT: That's what I understood.

2 MR. HAWKINS: And those proceeds were intended for the
3 fire victims. Most of them were paid out to fire victims, but
4 there's a strong constructive argument -- a constructive trust
5 argument there.

6 THE COURT: I saw that in your papers. I don't think
7 that's a very good bankruptcy argument.

8 MR. HAWKINS: But these are the only -- those dollars
9 that came in from the insurance companies, the only people who
10 could access those dollars were the fire victims. They weren't
11 available to other general unsecured creditors.

12 THE COURT: Well, then, Mr. Hawkins, tee up the motion
13 as a separate motion and ask and make that case. But I think
14 what I'm having trouble with is not that I'm not sympathetic to
15 your clients' situation, or all the victims, or all the
16 creditors, but I don't think I can tee it up and link it to the
17 DIP motion.

18 And if you have a viable argument under constructive
19 trust, which I don't think was fully explored, you said it, but
20 I see lots of people making constructive trust arguments. And
21 if you have a real viable argument, make it, but don't do it as
22 part of a DIP finance -- I'm not telling you what to do. I'm
23 telling you that I don't think I can make a decision that is
24 favorable to your client as a function of whether to decide to
25 approve the DIP agreement or not.

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1 You've heard extensive argument asking me to approve
2 the DIP agreement. If I decide that I'm not yet ready to
3 approve it, it would be for the reasons that I was discussing
4 with the other counsel. It wouldn't be because -- I mean,
5 again, at one level I'm very sympathetic to your clients, but
6 as a legal matter, I don't think I can provide them for any
7 relief or -- that's all.

8 MR. HAWKINS: I understand your point, Your Honor, and
9 we will explore bringing it separately. And interestingly
10 enough, the debtors have their own motion recently filed --

11 THE COURT: I'm aware of that.

12 MR. HAWKINS: -- to pay Butte County on pre-petition
13 settlement agreements so --

14 THE COURT: I'm aware of that. And you're welcome to
15 see if you can match them up together or make some -- again, I
16 don't mean procedurally on the calendar. What I meant is maybe
17 the debtor would be willing to explore that with you. I don't
18 know. But that's their decision. That's not something I can
19 deal with today. So I'll just leave it at that. I don't think
20 I can accommodate you for this issue.

21 And the lobbying thing, I just didn't know how to cope
22 with that. I mean, to some extent you made such a persuasive
23 argument that you demonstrated how the lobbying has been
24 successful. I mean, if the company has managed to reduce some
25 of its liabilities by lobbying, that's another argument for

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1 lobbying.

2 MR. HAWKINS: I understand there are two sides of that
3 coin, Your Honor.

4 THE COURT: Yes.

5 MR. HAWKINS: One improves the finances and the other
6 improves safety. And we'd ask you to condition the DIP
7 financing on the side of that coin that falls to safety.

8 THE COURT: I know. But I think to say -- to take
9 your client or you on behalf of your clients and say would I
10 please tell this debtor it cannot engage in lobbying, it cannot
11 spend any money in lobbying, I don't know that I have the
12 authority to do that.

13 And secondly, I mean, it's ordinary course of
14 business. Like it or not, it's true, it's a fact. And they're
15 saying, We're making our business decisions. If they make
16 imprudent business decisions, there are consequences.

17 So I can't sit here and say to the management of the
18 debtor, I don't think you should be paying money to lobbyists.
19 I mean, at a personal level, I might have a different opinion,
20 but as a legal matter, I don't think I can impose that on them.

21 MR. HAWKINS: The objections on that point, Your
22 Honor, from the other parties here related to governmental
23 entities and regulators being involved in the plan and
24 negotiation process. And that was not what we request to be
25 prohibited at all. We were referring to the spending of money

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1 to change laws. That's what we --

2 THE COURT: Okay. I think that, as a general matter,
3 a debtor in possession is in charge of managing its own affairs
4 and court can't micromanage and say, any more than I can tell
5 them what to do for the various other things that they do.

6 And there's a strong sense of conduct or a conduct
7 that should be changed that a debtor needs to be reminded of,
8 that's why you have creditors' committees, so convince them
9 that they ought to alter their decisions. But I can't say I'm
10 sympathetic to your clients, your fifty-two victims; therefore,
11 I'm going to order the debtor not to pay lobbying unless they
12 pay your fee. I can't do it.

13 So I've got your point and I've noted it.

14 MR. HAWKINS: Understood, Your Honor.

15 THE COURT: And I appreciate your comments.

16 MR. HAWKINS: Thank you.

17 THE COURT: Okay. So Ms. Dumas, you're last up by
18 your own makings. And I've kind of lost track of my timing and
19 we've run a little late, but why don't I ask you to make your
20 comments and see what you do here.

21 MS. DUMAS: Thank you, Your Honor. Cecily Dumas,
22 Baker & Hostetler, appearing on behalf of the official
23 committee of tort claimants. And I'm not going to take very
24 much time, at least in my opening remarks.

25 First, I want to introduce a couple of people. My

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1 partner, Eric Goodman, is here with me in the courtroom.

2 THE COURT: Mr. Goodman.

3 MS. DUMAS: And also, in the courtroom is Karen
4 Lockhart.

5 THE COURT: Good morning, Ms. Lockhart.

6 MS. DUMAS: Ms. Lockhart is the chair of the tort
7 claimants' committee. Her father died in a fire that consumed
8 her childhood home that was caused by PG&E. Her loss is
9 similar to -- unique to her but similar in nature to the losses
10 sustained by all of the people to whom we are reporting,
11 responding, and ensuring that we're doing our utmost to protect
12 their interests in this bankruptcy case.

13 I'm a bankruptcy lawyer, not a plaintiff's tort
14 lawyer, so it's an intersection for me. But what that
15 intersection brings me to is my own personal sense of cognitive
16 dissonance about this loan and this case.

17 On the other hand, I've done a lot of DIP loans and
18 I've negotiated a lot of DIP loans on the part of the debtor,
19 and I understand everything that JPMorgan is saying. JPMorgan
20 even brags in its reply memorandum that it managed to put
21 together what it believes to be the largest DIP loan in U.S.
22 history, five billion. That's quite an accomplishment.

23 And I think the financial markets are probably having,
24 frankly, quite a successful time with this case and the loan
25 facilities and the equities in this case. It may be a five

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1 billion dollar DIP loan, but I challenge anybody in the
2 courtroom to tell me the last time a DIP loan was made to a
3 company that had a ten billion dollar market cap. So when I
4 hear what's --

5 THE COURT: Well, you'll recall that the prior
6 bankruptcy of the debtor that you were involved with and I was
7 involved with, they had a liquidity crisis then, too.

8 MS. DUMAS: Exactly right.

9 THE COURT: So we've been there and done that for a
10 different reason in terms of liquidity.

11 MS. DUMAS: On a liquidity crisis.

12 THE COURT: So the book value didn't get the lights or
13 the operational expenses paid. Do you remember that?

14 MS. DUMAS: I do remember that, Your Honor. And thank
15 you for reminding everybody in the courtroom that we're both
16 old enough to have been involved in PG&E 1.

17 But my point is that, from the perspective of the
18 financial markets, this case is -- I mean, lenders are going to
19 be trading in and out of the DIP, they're trading in and out of
20 the bonds, they're trading in and out of the equities, people
21 are making money left and right. That's all good. That's what
22 we're allowed to do in our financial markets. And it reflects
23 the health of the company.

24 On the other hand, the cognitive dissonance is that
25 there are people who are still living in tents because of

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1 PG&E's conduct as found by its own admissions and independent
2 regulators.

3 So put aside the cognitive dissonance for the moment
4 and let's just talk about this DIP. And I'm going to start
5 with what I hope to be, in optimism, two areas, two points in
6 which we might be able to reach agreement. I did have numerous
7 conversations with counsel for the debtors and counsel for the
8 lenders, and at the conclusion of those, they politely told me,
9 No, we're not going to do anything. But they had the
10 discussions and I appreciated that.

11 So the two points that I think we can get to agreement
12 on are really kind of more technical points, and that is this
13 whole point about the CPUC intervention before utility assets
14 can be foreclosed on, as I explained -- and maybe somebody did
15 better research than we did, but as I explained to the DIP
16 lenders and the debtors' counsel, when we looked at California
17 state law, we were unable to find a legal requirement, once the
18 CPUC having agreed to the granting of a lien, a legal
19 requirement that you have to go back to enforce the lien. As a
20 matter of fact, the cases suggest that you don't have to go
21 back. So they promised to go back, which is great.

22 I don't want to get into the verbiage of seek CPUC
23 approval or obtain. What I'd like to see is the order simply
24 say the CPUC has had to have authorized. Okay.

25 So let's just put it in the passive voice, not

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1 seeking, because, again, I may be paranoid, but it seems to me
2 that when the debtor promises to go back to the CPUC, that's
3 not binding on the lenders, but it's --

4 THE COURT: Are you saying it's contingent subsequent?

5 MS. DUMAS: No, no, no. It's that they can't enforce
6 until the CPUC --

7 THE COURT: Yes, that's what I'm saying.

8 MS. DUMAS: It's a language thing.

9 THE COURT: But is it something they could get ahead
10 of time by way of a clarification now or only in the future if
11 there's a default?

12 MS. DUMAS: However they wish to do it.

13 THE COURT: Which are you advocating?

14 MS. DUMAS: I'm only advocating for before they go
15 back in to actually exercise remedies against utility assets,
16 that a condition precedent to that is CPUC approval, in the
17 passive voice. Not who has to go get it or who's bound by it,
18 but just it has to have been done.

19 THE COURT: Using the passive voice, bad precedent.

20 MS. DUMAS: I've been accused of that on many
21 occasions.

22 THE COURT: Passive voice should not be used.

23 What's the other condition?

24 MS. DUMAS: All right. Back to the passive voice
25 because, again, I get schooled in grammar a lot, but the point

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1 is, is that the lenders can't go ask the CPUC approval, only
2 the debtor can, but nothing in California law says anybody --
3 they're not bound. That's my first point, a wording.

4 My second point is another relatively discrete point,
5 and that is Mr. Zumbro clarified, and we appreciate that, that
6 the inability to investigate or challenge the liens or claims
7 of the DIP lenders applies only to their status as DIP lenders.

8 THE COURT: Yeah, I read that. I mean, I think I saw
9 that in the terminology too.

10 MS. DUMAS: Yes. But it's not so -- the language is
11 not entirely clear. It could be a smidgen clearer.

12 But the point is, is that a number of the DIP lenders
13 also have pre-petition unsecured loans. The prohibition
14 against challenging the claims shouldn't extend to their status
15 quo pre-petition lenders.

16 THE COURT: But it doesn't. I mean, I think what he
17 said, it doesn't and --

18 MS. DUMAS: Yes, he said it doesn't. The language of
19 the order could be a little bit tighter, because it ties in --

20 THE COURT: But who's going to go investigate a
21 pre-petition unsecured claim of a creditor? Who's going to do
22 that?

23 MS. DUMAS: We just want to make sure there's no
24 overlap.

25 THE COURT: I understand that, but if Bank X is a DIP

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1 participant but also is a pre-petition unsecured creditor,
2 who's going to waste time to investigate unless it's somebody
3 objecting to their claim? I mean --

4 MS. DUMAS: We just don't want any overlap. Again, I
5 wasn't able to find any sneaky rollup. I asked them about it.
6 They assured us there's no sneaky rollup. I just want to make
7 sure there's not any sneaky this isn't allowed claim, the pre-
8 petition claim, just because I'm a DIP participant. These are
9 language issues.

10 THE COURT: So let's go back to the passive voice and
11 CPUC. What's your take on the provision of the default
12 language about appointment of a Chapter 11 trustee?

13 MS. DUMAS: Oh, okay. So now we're going to get to
14 the meat of the coconut. This is not my two technical points
15 on which we might reach agreement. This is a big point.

16 Your Honor, let me just make a couple of examples.
17 You don't need to get to the appointment of a trustee, which,
18 as we pointed out on your papers, is actually a meaningful risk
19 in the case. But you don't even need to get there. You're
20 correct, and you've said a number of times, they're removing
21 your evaluation of whether a lift stay is warranted as long
22 as -- the defined term is termination event has occurred.

23 THE COURT: Yes, termination.

24 MS. DUMAS: So let me just show you, by way of
25 example, the actual application of two termination events in

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1 this long credit agreement.

2 THE COURT: Are you looking at the credit agreement or
3 the --

4 MS. DUMAS: The credit agreement.

5 THE COURT: Okay, I got it. I've got page 73 right
6 here.

7 MS. DUMAS: So look, I'm going to make it easier for
8 you. I'm going to take you to page 59 of the credit agreement,
9 which is the affirmative covenant to comply with laws. Section
10 6.4 --

11 THE COURT: Okay.

12 MS. DUMAS: -- subsection C. So the debtor has to
13 comply with all requirements of law except to the extent that
14 failure to comply therewith could not in the aggregate
15 reasonably be expected to have a material adverse effect.
16 Right? Okay. Normal, standard DIP provision.

17 However, in this case, on this day, the minute you
18 enter this order, that could be in violation. The reason for
19 that? Because Judge Alsup is currently, right now, conducting
20 criminal probation proceedings. On April 2nd he's going to
21 set, either issue another OSC or set the terms of probation.
22 But there's a pending criminal proceeding.

23 I'm not suggesting that the lenders are going to
24 declare a default on that. I'm just suggesting that they
25 could, if they decide to, because this isn't a typical debtor.

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1 It's not currently complying with law. That's just one
2 example. I mean, just switch to --

3 THE COURT: You've gone through the fine print here
4 with --

5 MS. DUMAS: Yes, sir, I have.

6 THE COURT: -- with the defined terms. I have not
7 read all these so I don't know what the defined term
8 requirement of law is, but --

9 MS. DUMAS: Well, you would assume it's not having a
10 criminal --

11 THE COURT: I would assume that.

12 MS. DUMAS: -- proceeding pending. So let me just
13 give you a second example, because I don't need to go through
14 all of them. I don't want to belabor the point, but if you
15 switch to page 67 -- oh, and by the way, in fairness, the
16 debtor would have a thirty-day cure period for its violation of
17 laws, so it would have to run up to Judge Alsup and say, you
18 have to undo all this within thirty days or our lenders take
19 over our case.

20 THE COURT: So paragraph 67 -- page 67.

21 MS. DUMAS: So page 67.

22 THE COURT: What paragraph?

23 MS. DUMAS: Paragraph 7.5. Mergers, consolidation,
24 sales of assets and acquisitions. So they can't merge, et
25 cetera, et cetera, or -- hang on --

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1 THE COURT: I mean, this looks pretty standard to
2 me --

3 MS. DUMAS: Sorry, I'm looking for the -- sorry,
4 sorry, sorry, sorry.

5 THE COURT: This is kind of innocuous to me.

6 MS. DUMAS: I'm going for the sales or sale -- hang
7 on, hang on, let me get there.

8 THE COURT: Well, the dispose of in one transaction
9 is --

10 MS. DUMAS: The dispositions of assets -- you get my
11 point.

12 THE COURT: Okay.

13 MS. DUMAS: So -- sorry, I lost track of -- in the
14 moment, I lost track of the provision -- but the disposition of
15 assets is dispositions are generally listed -- limited to a
16 bucket -- a basket amount twenty-five million. This debtor
17 said, when it filed the case and the media reported that the
18 debtor was considering before it filed the case, selling its
19 gas pipeline system. So obviously, if it decides to do that as
20 part of its reorganization, it -- an event of default is going
21 to be triggered, which doesn't have a cure period.

22 THE COURT: Well, you know, there are -- it looks like
23 there are about fifteen exceptions to this paragraph 7.5 that
24 you read me. Are you sure that all these options don't apply?

25 MS. DUMAS: Yes, sir, they can't sell the gas pipeline

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1 system without the consent of the lenders. So, again, I don't
2 want to take a lot of time on this point. The only point that
3 is worth making here is the main point Your Honor has repeated,
4 which is the -- what is wrong with this credit agreement, under
5 the circumstances of this debtor, is Your Honor's relinquishing
6 control upon simply finding that one of these things happened.

7 THE COURT: That's an event. That's the event.

8 MS. DUMAS: Exactly. All you have to do is find that
9 it occurred, not whether it has a material consequence --

10 THE COURT: So what should I do?

11 MS. DUMAS: -- not what should happen next.

12 THE COURT: What would you suggest that I do?

13 MS. DUMAS: Well, let's try to put that in context.

14 So we submitted, in our papers, that the real reason behind
15 this -- and counsel confirmed -- that the real reason behind
16 all these provisions is that the lenders wanted to have undue
17 control over the reorganization. Over the process.

18 MR. ZUMBRO: Your Honor, I'm sorry, but I did not say
19 that.

20 MS. DUMAS: No, counsel for JPMorgan did.

21 THE COURT: Well, I didn't --

22 MS. DUMAS: So what they said is that --

23 THE COURT: Well, I didn't hear it, because I went and
24 read that definition of acceptable plan and it didn't look
25 like --

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1 MS. DUMAS: No, no, no.

2 THE COURT: -- anywhere near what you're describing.

3 MS. DUMAS: No, what he said was, if there is an event
4 of default, there will be a negotiation. The point of that is
5 is that they want JPMorgan and this syndicate of lenders to
6 force the debtor to go talk to them to determine next steps.

7 THE COURT: But that's true in most --

8 MS. DUMAS: Not to talk to you -- determining.

9 THE COURT: But you know and I know that's true in
10 most debtor defaults. You go talk to the lender. And if the
11 question is whether the Court has any role in the plan --

12 MS. DUMAS: That's right. So --

13 THE COURT: So what would you -- what would like on
14 your wish list? What you have them change?

15 MS. DUMAS: So --

16 THE COURT: Relief from stay?

17 MS. DUMAS: I think that they -- the most
18 inappropriate and unsupportable term of this credit agreement,
19 which, admittedly, the lenders need -- the debtor needs this
20 facility. We said that in our papers.

21 THE COURT: We all agree that. True.

22 MS. DUMAS: The most unsupportable provision, given
23 the value of this debtor and the significance of this case to
24 the State of California and its energy markets, is the
25 relinquishment of the bankruptcy court's power to do anything

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1 other than determine that a termination even has occurred.

2 THE COURT: So what be the more --

3 MS. DUMAS: We object to that being in the --

4 THE COURT: What would be the more traditional thing
5 to do?

6 MS. DUMAS: What we put in our --

7 THE COURT: Relief from stay.

8 MS. DUMAS: -- objection.

9 THE COURT: Wouldn't it be just to make a motion --
10 make somebody have to --

11 MS. DUMAS: That's exactly what we did.

12 THE COURT: -- convince the Court for relief from
13 stay --

14 MS. DUMAS: It was a suggestion of the tort committee
15 that the burden, in fact, be shifted to the lenders to
16 demonstrate to the bankruptcy court -- prior to going to the
17 CPUC -- but to demonstrate to the bankruptcy court that
18 whatever occurred in the bankruptcy court's judgment, is worth
19 permitting the lenders to exercise their remedies. That's
20 exactly what we're saying.

21 THE COURT: Well, are you saying cause for relief from
22 stay? I mean, I want to bring it back to bankruptcy
23 terminology. In the regular everyday case, the motion for
24 relief from stay --

25 MS. DUMAS: I think 362(d) is appropriate.

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1 THE COURT: And I --

2 MS. DUMAS: Because they're going to be over-
3 secured --

4 THE COURT: Right.

5 MS. DUMAS: -- they will -- the regular 62 findings
6 are going to be able to tell you that the property is --it's
7 necessary for the reorganization, et cetera.

8 THE COURT: Well, let's go back to basics. What are
9 the basic elements of reading for relief of stay? Cause, or
10 lack of equity and no prospect of reorganization, and who's got
11 the burdens?

12 MS. DUMAS: Exactly.

13 THE COURT: We know who's got the burdens. Debtors
14 got the burdens for the most part, right?

15 MS. DUMAS: That's right.

16 THE COURT: So what's wrong that?

17 MS. DUMAS: The debtor here has -- the debtor here has
18 abdicated to the lenders any meaningful judgment call with
19 respect to the materiality of events which could trigger a
20 termination event, in advance of any of them occurring and the
21 circumstances that trigger -- I mean, and we could go
22 through -- I just gave you two examples, they want -- but --
23 selling the gas system --

24 THE COURT: Well, but see, selling the gas system is
25 one of those things that would be a very complex thing in and

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1 of itself. To me, appointment of a trustee is -- it's
2 instantly done, or if a mot -- party, a committee, or a party
3 in interest, or the U.S. trustee, makes a motion to this Court
4 to replace the debtor in possession with a trustee. That's one
5 of those things you deal with it, you make a decision, and then
6 the outcome is the outcome. It's not like a complex sale of a
7 gas transmission line. And if the Court determines that
8 there's cause for that kind of remedy, then what happens,
9 happens, including under the -- Mr. Hanson's explanation and
10 the document -- the financiers have nothing more to do, they're
11 free to enforce their rights. And if they have to go to the
12 CPUC, that's another story. But they don't have the bankruptcy
13 court interfering with that decision, unless we go back and put
14 the more traditional relief from stay-type remedies in there.

15 MS. DUMAS: Yes, sir. I think where your -- where we
16 were differing in my argument and your questions to the other
17 parties were, I was talking about, even under the scenario of
18 the debtor doing simply what it wants to do in its
19 reorganization, the lenders have the right to trip it up. You
20 were talking about even more scary circumstances, which is a
21 third-party event occurs in the case that nobody in this
22 bankruptcy court can control, such as withdrawal of the
23 reference and appointment of a trustee. Some unforeseen
24 circumstances that is not intended.

25 THE COURT: Well, but appointment of trustee can be at

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1 this level too, you know that. So what I'm getting at is --

2 MS. DUMAS: That's true. But --

3 THE COURT: The point is, if I'm the presiding judge
4 and a party in interest persuades me to order the appointment
5 of trustee, then I order the appointment of trustee, period.
6 And then the question is what do I do next? Maybe that trustee
7 comes in and says, please restrain the lenders from enforcing
8 their rights. But I guess I'm not sure what you want me to do.
9 If you think that's the right result, to have the bankruptcy
10 court control, at least the next step for the lenders to
11 enforce their right -- their remedy.

12 MS. DUMAS: We think that is the right result.

13 THE COURT: Okay.

14 MS. DUMAS: We do not think that there has been a
15 sufficient showing, under the circumstances and financial
16 condition of this debtor, to cause the bankruptcy court to make
17 an intentional decision to relinquish its power upon the
18 occurrence of a termination event. We think that the -- that
19 should be --

20 THE COURT: Okay.

21 MS. DUMAS: -- circumstances pursuant to which the
22 lenders may go to the bankruptcy court for relief from
23 automatic stay. And if, in fact -- and we trust that the Court
24 will understand how to make a determination of whether their
25 loans are impaired, their right of repayment is impaired, their

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1 collateral is impaired, or any of the other considerations that
2 the Court makes.

3 THE COURT: But you do concede, don't you, that
4 what -- of all the hundred things that make this case
5 different, one of the things is this is a post-petition loan,
6 this is a lender who wasn't forced in under use of cash
7 collateral -- it wasn't a forced loan, it was the lenders --
8 all fifty of them in the syndicate -- and their advisers have
9 chosen to make a substantial sum of money available under the
10 terms that they have declared in this lengthy document. And so
11 if I take your suggestion -- and the other creditors' committee
12 seems to be -- welcome that outcome too, I am upsetting,
13 potentially, at least, that delicate balance of a negotiation.
14 Now, maybe it won't upset it, maybe they'll say fine, we'll
15 live with it. I don't know; that's their call. But I have to
16 make that decision to force them to make the next decision,
17 right?

18 MS. DUMAS: Yeah. I mean, so counsel already informed
19 the Court that certainly the pricing of the loan, and perhaps
20 other terms, would be implicated.

21 THE COURT: Right.

22 MS. DUMAS: This is a situation in which the ability
23 of Wall Street collectively to provide five billion dollars
24 dampens the prospect of the debtor having any other recourse to
25 borrowing. So we concede that we are where we are in terms

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1 of --

2 THE COURT: Well, but, again, I'll make the decision,
3 that's what I'm supposed to do, but I have to accept there
4 could be consequences to it. So do you accept that there are
5 consequences to it? You're trying to persuade me to tell the
6 lenders I won't allow this automatic relief from stay
7 provision; you'll have to come back and get permission to
8 enforce your remedy. And if I dismiss that one requirement,
9 then there are consequences. Maybe they'll go out in the hall
10 and come back in five minutes and say fine, or maybe they'll go
11 back to the drawing board and maybe this entire restructuring
12 will be -- I won't say in jeopardy, but they'll be -- there
13 could be significant changes. Does your committee want to run
14 that risk?

15 MS. DUMAS: On behalf of the tort committee, we
16 believe that this is an inappropriate term that the Court
17 should reject. We understand the consequences. The lenders'
18 counsel has posed in open court there are consequences. We
19 believe that, in the context of this case, and reading the
20 financial press as we all do about this case --

21 THE COURT: I don't.

22 MS. DUMAS: If you did, you would know that Wall
23 Street is very sanguine about the upshot of the proceedings to
24 equity holders. You would read that --

25 THE COURT: Well, I mean, I learned a long time ago,

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1 as you did, that DIP loans are good deals. You got lots of
2 protections and lots of benefits, and DIP lenders make loans
3 for reasons. So --

4 MS. DUMAS: And who decided it's a DIP loan? Because
5 we have reportedly solvent debtor, so put aside that it's a DIP
6 loan. Let's just look at the company in the context of this
7 company provides a quasi-public utility, it provides public
8 services to millions of Californians, it is too big to fail,
9 Sacramento's not going to let it fail, the CPUC is going to
10 find a way to have these costs passed through to ratepayers or
11 taxpayers or -- this affects the whole state of California --

12 THE COURT: Right, it does.

13 MS. DUMAS: -- not just PG&E's customers. It affects
14 Sempra, Southern California Edison.

15 THE COURT: Right.

16 MS. DUMAS: There is not a reasonable circumstance in
17 which one can conclude that this money is at risk, secured and
18 at the top of the credit stack, of a company that must come out
19 of this bankruptcy case. So yes, we're willing to take the
20 risk that they will go ahead and decide to make the loan,
21 notwithstanding being subjected to Your Honor's evaluation of
22 whether this is the right thing for the reorganization to
23 proceed. Yes, we are willing to take that risk.

24 THE COURT: Okay. Any further?

25 MS. DUMAS: One more observation. We, as well as Mr.

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1 Sullivan's clients, remarked that the use of proceeds seem a
2 little lopsided. Yes, I am a bankruptcy lawyer. Concededly,
3 this is not something that's an appropriate condition of a DIP
4 loan.

5 THE COURT: Which one, on the carve-out?

6 MS. DUMAS: No, the payment of the Butte Fire
7 settlements.

8 THE COURT: Oh, oh, settlement.

9 MS. DUMAS: So just -- we were simply trying to make
10 the point to the debtor that it has sought to pay, what, 60
11 million, 256 million, a 100 -- almost half a billion dollars to
12 other pre-petition creditors, and we understand, because I'm a
13 bankruptcy lawyer, that these are payments that are justified
14 because they're accretive to value of the estate going forward,
15 and a successful reorganization.

16 THE COURT: Well, we used to call them critical
17 vendors, right?

18 MS. DUMAS: The critical vendors are an example of
19 that. So what I thought to myself is, how would I describe to
20 the debtor -- because that's really who we're trying to
21 convince to do some of these things -- how would I describe to
22 the debtor that it's accretive to value to provide shelter for
23 these people in Paradise, California? Or it's accretive to
24 value to satisfy some of the claims that they've already agreed
25 to settle, rather than putting them back in the claim pool to,

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1 perhaps, come up with a new, lower settlement formula. It is a
2 sign that the debtor, who has come to you and said on many
3 occasions, we're sympathetic, we to do right by tort claimants.

4 I think that the -- even the capital markets would
5 appreciate the debtor making a gesture of housing and
6 sheltering these people, of satisfying these obligations, while
7 they -- you know, I've -- they paid (indiscernible) and so it's
8 not unusual. There's 548 for that, if that was inappropriate.

9 But my point is, there is an intangible benefit to the
10 bankruptcy estate and the success of the bankruptcy estate, in
11 actually funding what may be pre-petition liabilities for
12 funding.

13 THE COURT: But I'm going to ask you the same
14 question.

15 MS. DUMAS: Yes.

16 THE COURT: Same question I asked Mr. Hawkins. I
17 mean, it's a legitimate request, and you're making a legitimate
18 request. But I can't link it to the DIP financing, can I?

19 MS. DUMAS: I agree.

20 THE COURT: Yeah.

21 MS. DUMAS: And it's really -- we were making a
22 message to the debtor. It's not --

23 THE COURT: No, if the debtor wants to file a motion
24 to pay one subset of victims, it can do that, and we'll see
25 what the creditors say.

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1 MS. DUMAS: Well, the creditors have said no.

2 THE COURT: Well --

3 MS. DUMAS: I mean, in their -- at their one point in
4 their papers, no, don't pay those fire victims with
5 settlements.

6 THE COURT: Well.

7 MS. DUMAS: But we understand, and that's the totality
8 of my observations, You Honor. I appreciate your time.

9 THE COURT: Mr. Zumbro, do you want to take a break,
10 or make your closing argument, or what? Because I -- obviously
11 we're run long, but this is important, obviously, and I want
12 you to feel free to say what you want, but people might want a
13 personal convenience break. I also probably do still have a
14 few questions left on the credit agreement, but we've covered a
15 lot of the stuff. So you tell me what you -- your preference.

16 MR. ZUMBRO: Whatever the Court's preference. I'm
17 happy to answer your questions or walk through your concerns
18 now.

19 THE COURT: Well, why don't you make whatever final
20 arguments you want to make for the debtor, and I'll --

21 MR. ZUMBRO: Paul Zumbro from Cravath, Swaine and
22 Moore for the debtor. Your Honor, I don't really have final
23 arguments to make, other than Ms. Dumas says they're willing to
24 take the risk. We are not. This is the financing we have,
25 Your Honor. I mean, we have -- maybe it's not a perfect DIP.

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1 We think it's as good as it gets. We certainly are not trying
2 to paint the corner -- into any corner --

3 THE COURT: Well --

4 MR. ZUMBRO: And --

5 THE COURT: It's okay. But what are the -- what if I
6 say that? What's going to happen from your point of view?

7 MR. ZUMBRO: I don't know, as we stand here today.
8 But I do understand there's been a very careful balancing of
9 the risks. I do know that during that seven-day people, people
10 can come and be heard before you. I know there's a --

11 THE COURT: Yeah, but, come on, you know that doesn't
12 mean anything, does it?

13 MR. ZUMBRO: But it does. It could mean an
14 injunction, properly crafted, is put into place where the stay
15 is lifted, but the Court has authority under 105 to craft an
16 appropriate injunction that would sort of touch on the
17 circumstances at the time. I think we're overstating the words
18 that say, if, upon the determination -- the determination, if
19 that has occurred -- the 362 stay is lifted. That doesn't mean
20 that this Court is dispossessing itself of jurisdiction over
21 the debtors and their assets. I do think that parties in
22 interest could seek an appropriate injunction, if the
23 circumstances merited, and this Court were to find that they
24 satisfy the standards. So I think there's a little bit of
25 overdramatization of the point.

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1 These DIP lenders want to make sure that they can
2 exercise their remedies in appropriate circumstances. The
3 notion that the debtors have somehow abdicated anything to the
4 DIP lenders is false. We've carefully negotiated events of
5 default, which have appropriate and high materiality
6 thresholds. What constitutes a material adverse effect of
7 PG&E, taken as a whole, and would result in something that
8 means that we can't repay the DIP facility. That's basically
9 what it comes down to. If some of that occurs, it's so large
10 that we're unable to repay the DIP loan, then the DIP lenders
11 have the ability to exercise remedies. And we think that
12 that's an appropriate balancing, a very challenging, integrated
13 set of considerations.

14 But Your Honor, I also note that, as difficult as the
15 trustee -- I understand the Court is concerned about the
16 Chapter 11 trustee. I understand that. Unfortunately, I also
17 understand that I don't think that there's any DIP lender who
18 would give a DIP loan that didn't have a trustee default. So I
19 think there can be difficult circumstances that we may find
20 ourselves in down the road, but we can't --

21 THE COURT: Again, I think you misunderstood me
22 before. You're misunderstanding me again.

23 MR. ZUMBRO: Okay.

24 THE COURT: I'm not suggesting there couldn't be a
25 default; I'm suggesting, what are the consequences of the

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1 default?

2 MR. ZUMBRO: Well, the immediate --

3 THE COURT: And it's instant relief from stay. So I
4 want to go back a minute ago, to where you were a moment ago.

5 MR. ZUMBRO: Sure.

6 THE COURT: Paragraph 14.B of the --

7 MR. ZUMBRO: Yes, sir.

8 THE COURT: -- DIP order --

9 MR. ZUMBRO: Yeah.

10 THE COURT: -- says, unless the remedies notice --
11 unless during the remedies-notice period -- so that's seven
12 calendar days. So if we have a three-day weekend, and I'm off
13 at a judge conference for one more day -- it's three days --
14 the court determines that a DIP-termination event has not
15 occurred, the automatic stay imposed, et cetera, et cetera, is
16 terminated. Now you're telling me that on day six I could
17 make, I could issue an injunction? Automatic -- free of
18 charge --

19 MR. ZUMBRO: No.

20 THE COURT: Can I -- can the -- no. The answer is no,
21 because the lenders are going to insist that it be whatever the
22 standards of getting an injunction are.

23 MR. ZUMBRO: I'm saying that I think the Court still
24 has the inherent authority to craft an appropriate remedy in
25 that circumstance. Yes.

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1 THE COURT: Can you be more specific?

2 MR. ZUMBRO: I think that --

3 THE COURT: Can I just say the stay's in effect?

4 MR. ZUMBRO: -- the burden is not on the DIP lenders
5 to have to sort of carry a stay-lift motion. Yes, I accept
6 that; that's true.

7 THE COURT: Okay.

8 MR. ZUMBRO: There's no dispute about that.

9 THE COURT: Okay.

10 MR. ZUMBRO: If that is what it says. My only point
11 is during that seven-day period, there's going to be a hearing
12 before Your Honor about whether or not a default occurred.
13 Those are rarely black-and-white issues, right? And so the
14 Court, at the end of the day --

15 THE COURT: Well, again --

16 MR. ZUMBRO: -- will make that determination.

17 THE COURT: -- again, it depends on what the default
18 is.

19 MR. ZUMBRO: Correct.

20 THE COURT: If Ms. Dumas says, you know, they're
21 trying to sell their gas pipeline; that's a default, that's one
22 thing.

23 MR. ZUMBRO: Right.

24 THE COURT: If he says that the District Court has
25 just instructed the management to be locked up, or the District

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1 Court has just decided that there should be a replacement of
2 management, that sounds like a much different situation.

3 MR. ZUMBRO: It does, but the loan agreement that we
4 have negotiated --

5 THE COURT: I know.

6 MR. ZUMBRO: -- that would be a default.

7 THE COURT: I understand.

8 MR. ZUMBRO: And I think we would have to -- we would
9 all have to be cognizant, including the Court, of the
10 consequences of that in those circumstances. But I don't think
11 it's sufficient reason for this Court to not approve this
12 financing, which is essential for this debtor to continue. If
13 that's what it comes down to.

14 THE COURT: Okay. Let me see if I have a couple
15 specific questions.

16 MR. ZUMBRO: Yes, sir.

17 THE COURT: I have one nonimportant one.

18 MR. ZUMBRO: Okay.

19 THE COURT: It's on page 4, at line 8. There's a
20 reference to the local rules of the United States District
21 Court for the Northern District of California.

22 MR. ZUMBRO: I'm sorry, are you on the proposed order,
23 Your Honor?

24 THE COURT: Um-hum. Yeah.

25 MR. ZUMBRO: Okay.

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1 THE COURT: I wanted to tell you I -- some of my
2 comments are not major. There's a reference at line 8, on page
3 4, to the local rules of the United States District Court for
4 the Northern District. It's the local rules of the United
5 States Northern District of California; it's not the District
6 Court.

7 MR. ZUMBRO: Okay.

8 THE COURT: It's the Northern District of California.
9 But now going back to the substance of it. The -- yeah, I told
10 you about I'm prepared to make the good-faith finding for Mr.
11 Kruz (ph.). Yeah, can you explain, just explain to me
12 something. This is not so much an action item as to make sure
13 I understand it, and that has to do with the DIP liens and the
14 specific reference to what's called the CPUC-excluded property.
15 There seems to be something called CPUC-excluded property, but
16 excluded from the exclusion is proceeds and products. Can you
17 explain what that means and why -- what's the history of that?

18 MR. ZUMBRO: Sure. The excluded property itself is
19 those items which are specified on schedule A --

20 THE COURT: Right.

21 MR. ZUMBRO: -- to the proposed order.

22 THE COURT: Right. And I did -- I looked at that
23 schedule, and there's a bunch of stuff on there. Right.

24 MR. ZUMBRO: Correct. And then --

25 THE COURT: But then there's an exclusion from the

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1 exclusion, right?

2 MR. ZUMBRO: I think all that is meant to say is if
3 there was something that didn't actually fall into the category
4 of those public-use assets but somehow were proceeds that came
5 back to the debtor, it would, in itself, be excluded. But it
6 was just a very hyper-technical point; I don't -- I think it's
7 probably unlikely --

8 THE COURT: Okay.

9 MR. ZUMBRO: -- in the real world that's anything --

10 THE COURT: Well, it says the DIP collateral --

11 MR. ZUMBRO: Which that --

12 THE COURT: -- shall include proceeds and products of
13 the excluded property, so it seems strange. I --

14 MR. ZUMBRO: Right. So if something flowed back, so
15 most of the CPUC-excluded property is stuff that the debtor
16 uses to carry out its obligations under various public
17 policies, but if something come back -- all that was to say if
18 some program were, for example, had reached to the end of its
19 term, and the property came back into the debtor's estate --

20 THE COURT: Okay.

21 MR. ZUMBRO: -- and we were no longer using that --

22 THE COURT: Okay. All right. That's fine.

23 MR. ZUMBRO: That's all that was meant to get at.

24 THE COURT: Okay. Now go to paragraph 8, on
25 limitations of use of proceeds. Now, this is the DIP loan

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1 proceeds. So it says, none of the DIP facilities, the DIP
2 collateral, et cetera -- any portion of the carve-out, and then
3 the next words, "or any other funds". Any other funds may be
4 used. Well, any other funds would be, to me, funds that aren't
5 part of the DIP collateral. So it seems like the phrase "or
6 any other funds", at line 23, shouldn't be there, but I'm open
7 to your advice on that subject.

8 MR. ZUMBRO: I think the idea here -- this is the
9 thing that, sort of, we can't -- the debtors are not permitted
10 to go after the DIP lenders in their capacities, such that I
11 think we were talking about -- in other words, just because
12 money is fungible, the DIP collateral does encompass the
13 debtor's cash, and so I think that's all. In line number 22,
14 where it says none of the DIP facilities, the DIP collateral,
15 the DIP loans, I think that was just belt and suspenders. The
16 money, whether we've borrowed it or whether it's on our balance
17 sheet and it just otherwise constitutes DIP collateral, can't
18 be used to investigate the DIP lenders.

19 THE COURT: So you think the word "funds" sweeps in
20 all cash or equivalents that is therefore treated as though it
21 fits the defined terms of DIP collateral, DIP loans, et cetera?

22 MR. ZUMBRO: I think it's probably belt and
23 suspenders, because I think it would probably be encompassed
24 within DIP collateral, in any event.

25 THE COURT: Okay. I'll accept that. That's fine. So

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1 now you told me -- and you commented in response to Ms. Dumas
2 about the DIP lenders are only protected here in their capacity
3 as DIP lenders, so let's look at page 18, lines 4 through 6.
4 Let's see if I got that right. It says, yeah, it says there
5 can't be any other claims of liens by or on behalf of any of
6 the DIP agents or the DIP lenders in each case in their
7 capacities as such. So --

8 MR. ZUMBRO: Correct.

9 THE COURT: -- your advice to me is that that means,
10 therefore, if bank X, who is a DIP participant, also is a pre-
11 petition loan lender, you know, in another facility, then that
12 latter is not encompassed within this phrase?

13 MR. ZUMBRO: Yes, sir. That's our understanding
14 that's the intent.

15 THE COURT: And so Ms. Dumas, you made that comment.
16 It seemed to me that seemed right to me. But going down a few
17 lines to lines 15 and 16, the DIP lenders do not want causes of
18 action under Chapter 5 --

19 MR. ZUMBRO: Um-hum.

20 THE COURT: -- to be used for their collateral. But
21 then you -- paragraph B, at line 15, says, or any so-called
22 lender-liability claims or causes of action. Well, I mean,
23 what if there's a lender-liability claim against lender A, pre-
24 petition? That's -- they're free to deal with that, aren't
25 they?

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1 MR. ZUMBRO: I thought, yeah, so I thought that was
2 still encompassed, but yet, as these orders often are, it's a
3 little dense, but --

4 THE COURT: Um-hum.

5 MR. ZUMBRO: -- it's a -- the paragraph, the big B
6 you're looking at, any so-called lender liability --

7 THE COURT: Yeah. Correct.

8 MR. ZUMBRO: -- is a sub-set of clause little c, which
9 begins on line 6, right after in each case or their capacity as
10 such, so --

11 THE COURT: I'll tell you -- all right.

12 MR. ZUMBRO: -- clause c says you can't investigate,
13 blah, blah, blah, and then on line 10, that all relates to the
14 DIP-secured parties.

15 THE COURT: Okay, yeah. I see what you're pointing
16 out, yeah, it's a little --

17 MR. ZUMBRO: And so --

18 THE COURT: It is a little dense. I'll accept your --

19 MR. ZUMBRO: Yeah.

20 THE COURT: -- explanation. So -- all right, now,
21 you've already told me that nobody's going to do anything with
22 the carve-out. You heard one counsel suggest we should do away
23 with all the carve-outs. I don't imagine you're advocating
24 that, right?

25 MR. ZUMBRO: I would prefer not to take that approach,

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1 yes.

2 THE COURT: Just again, walk me through, in simple
3 terms, how the carve-out trigger notice works, because I've
4 read it, and I wanted to make sure I hear it from the horse's
5 mouth.

6 MR. ZUMBRO: Sure.

7 THE COURT: The carve-out trigger notice, a great
8 term, right?

9 MR. ZUMBRO: It is a good term.

10 THE COURT: Okay.

11 MR. ZUMBRO: And then there's an even better one, the
12 post-carve-out trigger-notice cap --

13 THE COURT: Yeah, terrific, yeah.

14 MR. ZUMBRO: -- which is even longer, yeah. The way
15 it works is that fees of state professionals --

16 THE COURT: Um-hum.

17 MR. ZUMBRO: -- in other words, the debtors --

18 THE COURT: I know; that's you.

19 MR. ZUMBRO: -- in this case the official committee of
20 unsecured creditors and the official tort committee. Those
21 fees which are incurred are allowed as part of the carve-out
22 without a limit, until the carve-out --

23 THE COURT: Until the notice.

24 MR. ZUMBRO: -- notice has been filed. And so if a
25 notice is filed where the DIP lenders say, okay, an event of

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1 default or a termination event has occurred, we're notifying
2 you you're basically on the clock now. And so from and
3 after --

4 THE COURT: Well, are you on the clock, or are you --
5 the first twenty-five million are on us?

6 MR. ZUMBRO: The -- well --

7 THE COURT: Where does the twenty-five million apply?

8 MR. ZUMBRO: No. Anything that's accrued -- anything
9 that's occurred before the carve-out termination notice is not
10 subject to the twenty-five million-dollar cap.

11 THE COURT: Right, right.

12 MR. ZUMBRO: But once things from and after the
13 delivery and receipt of the carve-out trigger notice, that is
14 the limit on the amount of --

15 THE COURT: So if you're minding your own business at
16 your office some day, and you get a carve-out trigger notice in
17 the mail --

18 MR. ZUMBRO: Yeah.

19 THE COURT: -- it means you and your colleagues better
20 not go over the next twenty-five million dollars?

21 MR. ZUMBRO: Correct. Me and my colleagues and Ms.
22 Dumas and her colleagues and the other gentleman from Milbank
23 and his colleagues.

24 THE COURT: Right. Right. But the point is, so okay,
25 I -- that's the way I read it, and I just wanted to make sure I

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1 was reading it consistently with what you're saying. Okay. So
2 now go over to paragraph 11. This is for any subsequent
3 financing. Why is there, and what is the authority to say that
4 if there's a subsequent financing, then proceeds from that
5 credit will be immediately turned over to the DIP agents for
6 them. Why would that have to be? Why is that a requirement?
7 This is new money. So.

8 MR. ZUMBRO: I think this relates back a little bit to
9 the colloquy we had earlier, which is, if you look at lines 14
10 and 15, it just, it says -- this is a bit of a belt and
11 suspenders, too. This says, if we do something in violation of
12 the DIP credit agreement and the DIP orders, so in other words,
13 if we were to go out -- that 500 million dollars I referred to
14 earlier --

15 THE COURT: Um-hum. Right.

16 MR. ZUMBRO: If we went out and actually, instead of
17 500 million dollars we incurred 700 million dollars, then this
18 says, if you've incurred debt that you're not permitted to
19 incur, you have to use the nonpermitted debt to repay the DIP
20 loans. It just, it's a belt and suspenders. It's kind of a
21 way to backstop that covenant, thou shalt not incur more than
22 500 million. If you incur 800 million, you have to use the
23 proceeds to repay the DIP loan.

24 THE COURT: Okay. All right. So now go to paragraph
25 14.

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1 MR. ZUMBRO: Um-hum.

2 THE COURT: In 14 there we have a DIP-termination
3 event. That's the kind of stuff we were talking about, and a
4 number of things happen in those little romanettes there.
5 There can be a declaration of a termination of any further
6 commitment, a declaration if DIP obligations are due,
7 termination of the DIP loan documents. Number 4 is freeze
8 monies or balances in the debtor's accounts. Why is that
9 necessary? Why -- that -- I mean, if you can -- if twenty-five
10 million dollars can be paid under this post-DIP notice
11 provision that you just described, what's -- why is it
12 necessary to freeze the accounts on the moment that there's a
13 termination? It seems like it's inconsistent.

14 MR. ZUMBRO: Well, two things: I guess you're right.
15 There's a lot of little romanettes. The first several
16 romanettes you read, the, sort of, declaring their commitments
17 terminate --

18 THE COURT: Yeah, I didn't have any problem with them.

19 MR. ZUMBRO: But those all happened automatically.
20 It's once you start at clause 4, which you read, the freeze
21 accounts --

22 THE COURT: Right.

23 MR. ZUMBRO: It's only ones that we maintain with the
24 DIP lenders themselves. I'm not sure that that's where we
25 maintain all of our accounts, but starting from romanette 4,

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1 that's where you really get into the exercise of remedies,
2 which is starting from clause 4 on. Those, if you get down to
3 line 25, is prior to their exercise of any rights in clause 4
4 through 6. So those are the actions that they'd have to wait
5 for the seven days, wait for the judicial determination that
6 there actually has been a termination event.

7 THE COURT: But if you freeze the account, what does
8 that do to the twenty-five million-dollar post-carve-out
9 notice?

10 MR. ZUMBRO: They can't -- well, they're two different
11 things, but they can't actually exercise this remedy until the
12 court has said there has been a termination event. This is the
13 one where they -- even though it says that it's a proviso, it
14 says, but you can't actually do any of these things until the
15 remedies-notice period has expired. But it is unrelated to the
16 twenty-five million-dollar carve-out. But starting at clause
17 4, you can't freeze money, you can't otherwise enforce rights
18 or take any other actions until the seven-calendar-day
19 remedies-notice period has expired and this Court has actually
20 found that a termination event has occurred.

21 THE COURT: In that one week to do it. Including
22 weekends and holidays. On paragraph 32 of the order, there --

23 MR. ZUMBRO: Yes, sir?

24 THE COURT: -- is a provision that -- excuse me one
25 second. There's a limitation on liability; there's a

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1 determination that in determining to make the loans pursuant to
2 this order, the DIP parties will not be deemed to be in control
3 of the operations of the loan parties. Well, how do I know
4 that? How can I make the determination of that? Where's the
5 fact to support that? In other words, you know, this seems
6 like it's a get-out-of-jail-free card. That if I approve the
7 DIP financing, I'm approving that the DIP parties cannot be in
8 control or cannot be a responsible person. But how can I make
9 that determination? I mean, I probably believe it to be a true
10 statement, but there's no facts to support any such finding.
11 So how would I get around that? I mean, I -- what I'm trying
12 to tell you is I don't know how I can approve a limitation of
13 liability provision that I don't know how it operates or how
14 the underlying facts are operative.

15 MR. ZUMBRO: Yeah. That one, I'm just trying to think
16 of whether that's really this Court. I'm pausing just to think
17 whether that's really this Court making a finding or whether
18 it's just really more of a statement that, you know, that --

19 THE COURT: Well --

20 MR. ZUMBRO: -- it's almost going back to the passive
21 voice that they're not deemed to be determined.

22 THE COURT: Well, if I'm signing this order, I am
23 determining that they are not in control of the loan parties.
24 You know, it's like Mr. Kruz, who said -- he said, the
25 background of the loan. And I took his word for it and said I

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1 would approve that finding. So he provided a foundation for a
2 finding. It's been my practice, and other judges, to require
3 factual bases for -- particularly in a 363(m) sale, but also in
4 364 financing, to make a requisite finding. So I don't know
5 how I can do that. I -- you can -- this is not a deal breaker,
6 I don't think. And it's the end of my comments, so I'm going
7 to suggest that maybe we do need to take a break.

8 Well, let me make the following statement: You've
9 heard -- and I'm addressing this as much to your colleagues
10 from the DIP side and the unsecured creditors committee.
11 You've heard Mr. Dumas's comments; you've heard my comments. I
12 have some hesitation about giving up the absolute kind of
13 control -- and I'm not comforted with this notion that I could
14 just throw in a temporary restraining order, free of charge.
15 And I'd be -- I'm more inclined to insist that there be some
16 sort of control by way of the relief from stay method. I don't
17 want Mr. Hansen to reargue the case; I want to just share the
18 problem and ask, and suggest that maybe there ought to be a
19 short recess, or maybe I ought to continue this aspect of the
20 hearing for a few days, or something, for people to reflect on
21 it. And see what the creditors committee says, see what the
22 tort committee says, see what the DIP lenders says. Maybe
23 there's a solution that doesn't require, you know, a summit
24 conference with 50 DIP lenders. So I want some guidance from
25 you as to what you think would be the right thing to do at this

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1 point. Because I'm not comfortable just announcing I'm going
2 to approve it at this point. I'm not announcing that I won't;
3 I just want a further discussion on the subject.

4 MR. ZUMBRO: Well, I think I should take the Court's
5 invitation and have a discussion with Mr. Hansen, and we
6 should -- I would prefer not to continue the hearing. I think
7 it's important that we get this aspect of the case behind us.

8 THE COURT: Well, what if we took a break for an
9 hour --

10 MR. ZUMBRO: Okay.

11 THE COURT: -- or for an hour and a half, or maybe,
12 you know, 1 o'clock, and then either I hear what you and the
13 other counsel have to say or I go to the other motion and hear
14 that and then hear what people have to say. I mean, I haven't
15 made up my mind that I'm going to disapprove it or I'm going to
16 approve it. Obviously, a lot to think about here.

17 MR. ZUMBRO: Understood.

18 THE COURT: Will that work?

19 MR. ZUMBRO: I think that's a --

20 THE COURT: Mr. Hansen, is that all right with you?

21 MR. HANSEN: I just wanted to make one --

22 THE COURT: Yes, sir.

23 MR. HANSEN: -- point, Your Honor. I just -- this
24 isn't a hallway conversation with JPM. There are fifty
25 syndicate lenders, and it, as I mentioned before, it changes

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1 the risk. And so we have to go back to them and find out
2 whether or not they're prepared to continue to lend, and at
3 these prices, and whether they will stay in the loan. That's
4 unfortunately not going to be a today issue, so.

5 THE COURT: Well, but there is a few weeks left to go
6 on the time

7 MR. HANSEN: There is.

8 THE COURT: So I mean, I --

9 MR. HANSEN: Absolutely. There is. You have until
10 April 15th.

11 MR. ZUMBRO: April 15th.

12 THE COURT: Oh, I could --

13 MR. HANSEN: So we recognize that. I just wanted to
14 make sure the Court -- I didn't -- I -- from an expectation
15 standpoint, I didn't want you to think we're going to go out in
16 the hallway and come back and, you know, say it was okay.

17 THE COURT: I don't think that was likely to happen,
18 but you never know. Because the -- well, but I also want the
19 creditors committee and the tort committee to be in the
20 colloquy --

21 MR. HANSEN: Um-hum.

22 THE COURT: -- in the discussion. And you've heard
23 them. I don't need to be in the discussion. If at some
24 further date, whether it be at 1 o'clock today or 1 o'clock
25 next week or before the deadline, there's a resolution, fine.

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1 If not, then I still have to make the decision.

2 MR. HANSEN: Understood, Your Honor.

3 THE COURT: Okay.

4 MR. HANSEN: We understand. I'd also just point out
5 one other thing, quickly. Ms. Dumas said to you that the
6 requirement of law covenant was something that you needed to be
7 really worried about. As long as the debtor complies with law,
8 there's nothing to worry about. If the debtor is not complying
9 with law, which includes an order by a court, if they choose to
10 willingly not comply with that, that's a problem. I don't
11 think any lender would --

12 THE COURT: Yeah, I mean, look, I understood what she
13 was reading. I don't know exactly what Judge Alsup's doing on
14 any particular day in the case before him, and it may be a
15 nonissue at this point in terms of triggering something like
16 that. I've thought about all the things that I raised. I got
17 very satisfactory explanations from you Mr. Zumbro on a number
18 of them. And I'm down to a couple of deal points that are
19 concerning to me, and that's what I want to hear back on what
20 we should do about it.

21 MR. HANSEN: Yeah. I understand, Your Honor. And the
22 lenders understand that you don't think that they are trying
23 to, like, take the assets of the company. This is -- because
24 that -- there's somewhat of an implication around here that the
25 lenders are going to come sprinting into court, tell you you

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1 have no authority, take the assets, and run out of here.

2 That's not happening.

3 THE COURT: Oh, come on. They'd love to do that.

4 MR. HANSEN: And so -- and I know you know that, and I
5 know everyone here knows that.

6 MS. DUMAS: Take them, please.

7 MR. HANSEN: But I just needed to also reiterate the
8 point that it is not a hallway conversation.

9 THE COURT: Got it. All right. Then for everyone
10 who's been sitting by for these last two and a half hours, I'm
11 going to convene -- or recess this matter until 1 o'clock. Or,
12 I'll tell you what, just because there's so many people, we're
13 going to make it 1:15, and at 1:15, I'm going to take up the
14 public entity's motion, and then I've previously indicated to
15 counsel in that matter that I was going to allocate a total of
16 one hour. And this DIP motion was obviously much more -- it's
17 not that the public entity's motion is not important, but it
18 doesn't anticipate, I don't anticipate as much time being spent
19 on it. So my plan, then, at 1:15, will be to hear from the
20 moving parties and the opposing parties on that motion. And
21 then I'll get a suggestion on where we go from here in terms of
22 the DIP motion. Okay?

23 MR. ZUMBRO: Thank you, Your Honor.

24 THE COURT: Thank you, everyone. We'll recess until
25 1:15.

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1 (Recess from 11:53 p.m., until 1:15 p.m.)

2 THE CLERK: All rise.

3 THE COURT: And again. Please be seated. Ready for
4 the public entity's motion. Mr. Esserman, are you up on that
5 first?

6 MR. ESSERMAN: I think so.

7 THE COURT: And I think we've set aside thirty minutes
8 per side, right?

9 MR. ESSERMAN: Sure, and I'd like to take --

10 THE COURT: And I'm going to try to keep track of all
11 the invitees this time.

12 MR. ESSERMAN: Well, and I'd like to --

13 MS. KIM: I'm sorry. I'm sorry. Can I just -- good
14 afternoon, Your Honor. I think, actually, Mr. Zumbro may have
15 an update on the DIP motion that we might be able to at least
16 clear away something before we move on to the public entity's
17 committee motion.

18 THE COURT: Mr. Zumbro, you don't want to wait until
19 your turn? Come on. What have you got for me?

20 MR. ZUMBRO: Well, Your Honor, we spent the lunch
21 break productively, and I hope we have something. We were just
22 conferring with Ms. Dumas in the hallway, just to make sure we
23 had also consulted with the tort claimants committee as well.
24 But what we were able to work out, which we hope addresses the
25 Court's concerns, was a bifurcated approach. One, is on Your

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1 Honor's concern about the seven days versus seven business days
2 for all termination events. The bank is willing to agree to
3 seven business days for that general. And then, more
4 importantly, for the concern that Your Honor had expressed
5 about the termination event relating to the appointment of a
6 Chapter 11 trustee, the banks are willing to give us, or
7 give -- have the order reflect twenty-one business days. So a
8 significant lengthening of the time for the one specific
9 termination event that I think would cause the most concern
10 from the Court's perspective.

11 The debtors think that that's sufficient time.
12 Twenty-one business days, you know, would be enough time to
13 figure it out in the circumstances, either by the Trustee, in
14 that circumstance, discussing further with the DIP lenders, or
15 perhaps refinancing the DIP loan with a new DIP loan, if need
16 be. But we thought a twenty-one day -- excuse me -- twenty-one
17 business days for a Chapter 11 trustee termination event was a
18 significant accommodation on the part of the banks. They were
19 also willing to address Ms. Dumas's concern about paragraph 35
20 to clarify that the debtors will not only seek but will seek
21 and obtain the CPUC's authority for any transfer of utility
22 assets.

23 And finally, I don't have the document in front of me,
24 Your Honor, but the Court's concern about the CIRCLA, or the
25 environmental finding, the bank was fine clarifying that that's

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1 not a forward-looking finding. We're not asking you to make a
2 finding today that the banks are not control persons with
3 respect to these entities, but only that entering into the loan
4 documents, things that have actually happened today, there's
5 nothing that would indicate that the Court could make a finding
6 that they are not in control of these debtors today, but
7 nothing forward looking. And hopefully, that would satisfy
8 Your Honor's concern.

9 THE COURT: So let's go back to the termination event.

10 MR. ZUMBRO: Sure.

11 THE COURT: Let's say a court appoints a Chapter 11
12 trustee, what happens after twenty-one business days?

13 MR. ZUMBRO: Well, under -- after twenty-one business
14 days, the stay would be lifted and the lenders would be able to
15 seek to enforce remedies, subject to CPUC's approval.

16 THE COURT: But presumably the Trustee or other
17 parties-in-interest could seek injunctive relief? Or not? I
18 just need to clarify what then happens.

19 MR. ZUMBRO: There would be no proposal to change the
20 burden on stay relief; it was just to change the termination,
21 the time period.

22 THE COURT: Ms. Dumas, what's your response, if you've
23 had a chance to talk to your clients?

24 MS. DUMAS: I have not, Your Honor. We just met
25 moments ago, and the Court convened the hearing just now. I'm

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1 happy to do whatever we can to communicate with the clients.

2 It is a committee, however.

3 THE COURT: What would you like to do? Would you like
4 to try to do something today or to have a further hearing?

5 MS. DUMAS: The --

6 THE COURT: I mean, I've heard some concessions, but
7 you need to tell me what you think about them. But if it needs
8 a further hearing, we'll do a further hearing.

9 MS. DUMAS: The lenders would very much like to have
10 this resolved today. The debtor, for very sound reasons, would
11 like to have this resolved today. I don't know that I could
12 get my committee's consent to these conditions or to not think
13 of other added conditions that might require negotiation today.
14 I don't think it's realistic, but I do understand and respect
15 their desire --

16 THE COURT: Well, it's progress.

17 MS. DUMAS: -- to have this resolved today.

18 THE COURT: It's progress. I'm not faulting anybody.
19 Mr. Zumbro, how difficult would it be just to kick this over to
20 our next calendar, which is the 26th? Or, if necessary, set it
21 specially, but again, I feel uncomfortable with so many people
22 being -- particular traveling such distances, but that seems to
23 fit within the time limit -- time period.

24 MR. ZUMBRO: It's not a calendar concern that I have,
25 Your Honor, it's more of an exposure. I don't -- you heard Mr.

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1 Hansen, you know, mention that there's potential repricing risk
2 here. I really don't want --

3 THE COURT: I understand.

4 MR. ZUMBRO: -- to expose this debtor. We've paid
5 significant financing fees; we think we have a very good DIP
6 facility in hand. We think it's very important to move
7 forward, so I -- with all respect, I think I'd like to get this
8 resolve today. I just think there's too much of a risk of if
9 the lenders have more time to think about it, maybe they're
10 less inclined to give what they've offered up today.

11 THE COURT: Well, they're not going to back down from
12 their position, are they?

13 MR. ZUMBRO: They may not, but they may couple with
14 some kind of a --

15 THE COURT: Well, that wouldn't be very good for them.

16 MR. ZUMBRO: -- a repricing or other economic adverse
17 consequences for these debtors. It think it's important to put
18 this DIP facility behind these debtors' estates and move
19 forward to the other reorganization aspects of this case.

20 THE COURT: What's the regular committee -- where's
21 creditor's counsel? Yeah? What's your take on that? You were
22 sort of interest in some resolution that work

23 MR. KRELLER: Your Honor, Thomas Kreller.

24 THE COURT: Yes, Mr. Kreller.

25 MR. KRELLER: Thomas Kreller, of Milbank, on behalf of

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1 the official unsecured creditors committee. Your Honor, it is
2 an improvement. It's concessions from the lenders. We were
3 supportive before; we continue to be supportive. I like the
4 structure. I do think it addresses a couple of the concerns
5 that you raised that, frankly, we shared and gives a little bit
6 more room in those scenarios.

7 THE COURT: Well, but I'm going to assume something,
8 Mr. Kreller. I mean, I'm tired -- ask you to make a speech or
9 just to be heard and then I'm trying to talk.

10 I don't think that the lenders would have the bad
11 judgment to make this proposal and then take it off the table
12 within an hour from now. So I could do a little bit of both.

13 I could continue this to the next date, but ask Ms.
14 Dumas if she and her clients can indicate an acceptance before
15 then. And if she does, then chances are, I will, and we don't
16 even have to have a hearing.

17 But if she says no, and if there's any opportunity to
18 tweak it further among the parties, fine. If not, then at the
19 continued hearing, I make a ruling, up or down. And if it's
20 up, then it's a done deal. And if it's down, then I don't have
21 an answer. So I'm -- what's the down side to doing it that
22 way?

23 MR. KRELLER: Well, Your Honor, I don't know that
24 there is a down side. Any improvements that work to the
25 benefit of the estate are something that we would support. I

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1 do -- there certainly is an element of what Mr. Zumbro has
2 said, which we share, which is getting to a final order on the
3 DIP and moving past this --

4 THE COURT: Right. Right.

5 MR. KRELLER: -- stage of things. I think there is
6 value to that. But --

7 THE COURT: Well, but the fact is --

8 MR. KRELLER: But --

9 THE COURT: -- as we all agreed, that if I had called
10 in sick today, there's no drop-dead yet. It's April something,
11 right?

12 MR. KRELLER: Understood, Your Honor.

13 THE COURT: Okay.

14 MR. KRELLER: I think that's the right way to think
15 about it.

16 THE COURT: Ms. Dumas, is there any reason why you
17 couldn't have a reasoned time, a period of time, to confer with
18 your entire committee, if necessary, talk to the creditors'
19 committee, if necessary, talk to debtor or DIP counsel. And if
20 there is some further fine tuning that the parties can agree
21 to, then that's easy.

22 And if you indicate an acceptance of a resolution, I
23 am pretty sure that I won't second guess your call on that
24 because I also heard some concessions here. And I don't know
25 exactly what would happen if the twenty-one days run, but I

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1 know twenty-one business days is a lot more than seven real
2 days. So that would give you an opportunity to talk to your
3 client and to do what you want to do and if necessary, have a
4 hearing in thirteen days.

5 MS. DUMAS: There's no reason whatsoever why that
6 couldn't work. My earlier comments would -- were just
7 dedicated to expressing the notion that I don't know that I
8 could get a committee meeting together today, this afternoon.

9 THE COURT: Right.

10 MS. DUMAS: I understand --

11 THE COURT: Right.

12 MS. DUMAS: -- the concern. I don't think I could get
13 a quorum today, but certainly, what the Court has proposed is
14 acceptable to the tort claimants' committee.

15 THE COURT: Well, let me make sure we're clear. I
16 mean, we went through, during the oral argument, questions
17 about should there be a carve-out or should there not be.
18 We -- certainly the objections by other parties, the things
19 that were sort of extraneous to the DIP, I didn't give a
20 ruling, but I've -- certainly must have given an indication of
21 my thinking.

22 And I clearly sent the message that the seven calendar
23 days, but more importantly the consequences of something like a
24 Chapter 11 trustee, were dire, and I'm not worried that if the
25 banks agreed to this change, that there wouldn't be an

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1 opportunity for some people to do what they had to do.

2 So what I'm really trying to say is if the tort
3 victims' committee accepts these terms and doesn't succeed in
4 getting any other concessions, but they accept these terms,
5 that's fine. If they can persuade either the DIP folks and/or
6 the debtors to give further concessions, that's fine, too. And
7 if there's simply no resolution, if your committee says no, we
8 don't agree to any of this, then I'll make a decision at a
9 continued hearing.

10 So Mr. Zumbro and the others, I do understand you'd
11 like some finality to it, but I can't ask a committee of tort
12 claimants, who therefore, except for their lawyer, are not
13 bankruptcy experienced professionals, to just have, on the fly,
14 make a decision like this. They'll have to -- they have the
15 benefit of experienced counsel who can advise them. And if we
16 can accommodate people's travel schedules and -- without
17 inconveniencing the entire DIP group -- but we can reach some
18 resolution, that's a good thing to do.

19 Mr. Karotkin, we have a couple of matters on the 26th
20 and a few more on the 27th. So you seem to be the keeper of
21 the calendar. 27th? Or 26th? Or what? What do you think?

22 MR. ZUMBRO: Either day is fine. I guess it is
23 important, Your Honor. I just want to make it clear what we're
24 talking about. I actually don't think it's really correct to
25 have the tort committee have a veto right over this, but --

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1 THE COURT: They don't have a veto right.

2 MR. ZUMBRO: Okay.

3 THE COURT: They just have a right to be heard and
4 listened to at a --

5 MR. ZUMBRO: Okay.

6 THE COURT: You're not -- you're -- the -- they're --
7 the DIPs aren't taking it off the table, are they?

8 MR. ZUMBRO: No, they're not --

9 THE COURT: No.

10 MR. ZUMBRO: -- taking off the table.

11 THE COURT: Okay.

12 MR. ZUMBRO: But what I'm concerned -- I just want to
13 make sure -- with respect, I don't want to open this up to more
14 issues that might be raised by Ms. Dumas. I think we had a
15 constructive hearing today with Your Honor, and we sort of
16 narrowed it down to the core of what you're -- the Court was
17 really concerned about that.

18 THE COURT: But you don't have to negotiate with her.

19 MR. ZUMBRO: Okay.

20 THE COURT: If she can ask the DIP lenders to make a
21 concession, you should be grateful.

22 MR. ZUMBRO: Yeah. No, I understand.

23 THE COURT: Okay?

24 MR. ZUMBRO: I just don't want to open this up because
25 I think we have made a lot of progress in narrowing the scope.

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1 THE COURT: All that you need to do is be polite and
2 say no.

3 MR. ZUMBRO: Okay.

4 THE COURT: But they can't be polite and say no and we
5 take back what we offered --

6 MR. ZUMBRO: I understand.

7 THE COURT: -- in the afternoon. Okay?

8 MR. ZUMBRO: I understand, Your Honor. But I just
9 wanted to make it clear that there is no implication from the
10 Court's findings that the tort committee had a veto right. But
11 you just told me that I misunderstood you, so that's -- that
12 makes me feel better.

13 THE COURT: Well, I hope you misunderstood me. I'm
14 supposed to be making the decisions --

15 MR. ZUMBRO: I understand.

16 THE COURT: -- and listening to the arguments. And
17 didn't I say I would make a decision, I hadn't made up my mind?

18 MR. ZUMBRO: Yeah.

19 THE COURT: I haven't made up my mind.

20 MR. ZUMBRO: I understand.

21 THE COURT: But I try to do a little consensus
22 building.

23 MR. ZUMBRO: Yep. But we would like it just to be
24 clear that the scope of whatever's heard in front of you on the
25 26th is limited to the issues that we've just now narrowed it

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1 down to.

2 THE COURT: Mr. Zumbro, if Ms. Dumas or anybody else
3 can persuade them, you're -- the lender group to add fifteen
4 new concessions, that's fine.

5 MR. ZUMBRO: The scope of dispute, I think.

6 THE COURT: Okay?

7 MR. ZUMBRO: Yes. Okay.

8 THE COURT: They can do whatever they want. It's a
9 free country.

10 MR. ZUMBRO: Yeah.

11 THE COURT: But what you've said is the position
12 that's been communicated is what it is, and I accept that.

13 MR. ZUMBRO: Yes.

14 THE COURT: And she has to accept that. And so it's
15 another way of saying if -- and I don't want to be in the --
16 you know, interfere with good faith negotiations, but if at the
17 next hearing, I'm told by you or DIP's counsel or anyone else
18 saying there was no further resolution, then fine. I'm not
19 going to have -- there are no good guys and bad guys. I'll
20 make a decision.

21 MR. ZUMBRO: Understood. Thank you, Your Honor.

22 THE COURT: Mr. Hansen, did you want to add something?

23 MR. HANSEN: I just wanted to clarify, Your Honor.

24 THE COURT: Yeah.

25 MR. HANSEN: Kris Hansen with Stroock on behalf of --

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1 THE COURT: Sure.

2 MR. HANSEN: -- JPMorgan Chase as administrative agent
3 for the DIP loan. I just want to clarify that, from a record
4 perspective, there's no supplemental briefing. There aren't
5 new issues that are going to be raised in the context of the
6 DIP so that when we arrive on the 27th, you know, we find that
7 people --

8 THE COURT: No. No.

9 MR. HANSEN: -- took another shot from a briefing
10 perspective, and now we're --

11 THE COURT: I'm not inviting more briefing.

12 MR. HANSEN: Right.

13 THE COURT: But to collapse it to a hallway
14 conference -- I'm not opposed to counsel going out in the hall
15 and cutting a deal, either.

16 MR. HANSEN: Oh, absolutely.

17 THE COURT: And --

18 MR. HANSEN: But from the lenders --

19 THE COURT: -- if the counsel have to do it by long
20 distance telephone over days, that's fine, too.

21 MR. HANSEN: No, we understand that. I --

22 THE COURT: No, the evidentiary record or the --
23 whatever -- the oral argument record is closed.

24 MR. ZUMBRO: Okay.

25 MR. HANSEN: Right.

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1 THE COURT: And I mean, that being said, if there's no
2 agreement by the committee, I probably will listen to some more
3 argument, but I won't --

4 MR. HANSEN: Uh-huh.

5 THE COURT: -- reinvent the wheel here.

6 MR. HANSEN: No, I understand, Your Honor. It's --
7 and obviously the issue with -- we did as much as we could
8 without having to go and solicit our syndicate. So that's
9 where we came back. And that was --

10 THE COURT: Oh, come on, Mr. Hansen. What if I told
11 you I wanted twenty-four days?

12 MR. HANSEN: No, Your Honor. I think what the point
13 is if we're talking about -- this seems to be -- your question
14 was what happens at the end of the twenty-one business days.
15 And the answer is the same thing that would have happened at
16 the end of the seven days before we moved it to seven business
17 days. And really what this is is an opportunity for a Chapter
18 11 trustee to transition itself from a financing perspective
19 and work out a deal, either with --

20 THE COURT: Uh-huh. No.

21 MR. HANSEN: -- this incumbent lender group --

22 THE COURT: And that's fine.

23 MR. HANSEN: -- or someone else.

24 THE COURT: And I promise you I can joke with you, but
25 I'm not going to come back on the next time around and say, you

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1 know, I really think it should be twenty-four days. That -- I
2 wouldn't do that. But that being said, I'm not going to
3 disapprove any improvement that either of the committees --
4 even if the regular committee choses (sic) not to negotiate
5 further to this point. Maybe they will choose to negotiate
6 tomorrow or the next day.

7 So again, we'll go back -- so I take it, Mr. Hansen,
8 you and Mr. Zumbro would have preferred that the matter be
9 resolved today? I'm declining that offer. I'm inviting Ms.
10 Dumas to talk to her entire committee and communicate with you
11 and debtors' counsel. And if there is a -- an agreement among
12 the principals, I am not going to second guess and second guess
13 some more. I went through the drill myself. I didn't formally
14 say I disapprove this or that or the other thing. But clearly
15 the colloquy was at the point where I was concerned primarily.
16 And if the tort committee is unwilling to agree to that, then
17 I'll make a decision.

18 MR. HANSEN: No, I understand, Your Honor.

19 THE COURT: Okay.

20 MR. HANSEN: We just -- I understand.

21 THE COURT: Okay.

22 MR. HANSEN: It's a difficult position for the debtors
23 to have a DIP that may or may not be approved over the next
24 couple of weeks --

25 THE COURT: It is.

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1 MR. HANSEN: -- over a single issue, but that's --

2 THE COURT: I agree.

3 MR. HANSEN: -- where we find ourselves. I
4 understand.

5 THE COURT: I agree. And -- but just like anything
6 else, they're grownup people. They're -- they've done this
7 before.

8 MR. HANSEN: They do. Okay. Thank you, Your Honor.

9 THE COURT: Okay. Thanks very much.

10 MR. ZUMBRO: Just, before you move on, sir, I was told
11 by Mr. Karotkin the 27th would be better than the 26th, if we
12 could put -- if we could calendar for the 27th, that that would
13 work.

14 THE COURT: Okay. So again, go back to you Mr.
15 Karotkin. You tell me, what's best to manage with your staff?
16 Do you want me to lump everything at 1:30 -- I mean at 9:30
17 like I've done? Or shall I try to parcel these out because you
18 might get --

19 MR. KAROTKIN: Right.

20 THE COURT: -- half of them resolved. So is it
21 best --

22 MR. KAROTKIN: I think that if we put it on for the
23 27th first thing.

24 THE COURT: At 9:30.

25 MR. KAROTKIN: At 9:30. I think that hopefully they

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1 won't take very much time.

2 THE COURT: Then for the record for everyone in court,
3 every tracking on the phone, the motion -- what we're
4 conveniently calling the DIP motion -- is being continued to
5 March 27th at 9:30 Pacific Daylight Time here in this
6 courtroom.

7 And if the tort committee reaches a position where it
8 accepts what has been proposed by the DIP lenders and the
9 debtor, by way of a compromise that was stated on the record a
10 few minutes ago, I will not separately require a further
11 hearing. I will approve an order that is consistent with
12 whatever the tort committee and the other representatives
13 reach.

14 If they do not reach such agreement, we will have a
15 hearing and I will make a decision either to grant or deny the
16 DIP motion as modified. Okay?

17 MR. KAROTKIN: Thank you, Your Honor.

18 THE COURT: Everybody clear? I don't want anyone to
19 leave here unclear on what the deal is.

20 Ms. Dumas, you're okay with that?

21 MS. DUMAS: Yes, sir.

22 THE COURT: Good luck. Good luck to both sides.

23 Okay. Mr. Esserman, you're back on duty.

24 MR. ESSERMAN: Great. Thank you, Your Honor. I'd
25 like to reserve a little bit of time for --

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1 THE COURT: Yes, sir.

2 MR. ESSERMAN: -- rebuttal. I'm not so sure how long
3 I'll go for. Hopefully, less than twenty-five.

4 THE COURT: Well, I think we know the issues. Both
5 sides have briefed it.

6 MR. ESSERMAN: Exactly.

7 THE COURT: I know what's --

8 MR. ESSERMAN: Just for the record, Sander Esserman of
9 Stutzman, Bromberg, Esserman & Plifka firm on behalf of the
10 public entities that I previously identified. Who I did not
11 identify, because she was in the media room, was Petra
12 Bruggisser who's at Sonoma County Counsel's Office, the
13 representative sitting in the first row --

14 THE COURT: Thank you. Good afternoon.

15 MR. ESSERMAN: -- next to me. So she's here.

16 I'd like to start off by reading from the February 20,
17 2019, letter to me from the Department of Justice. Obviously,
18 we've got a couple of issues here.

19 THE COURT: From the U.S. Trustee Department?

20 MR. ESSERMAN: U.S. Trustee, yes.

21 THE COURT: Okay.

22 MR. ESSERMAN: From Andrew Vera (ph.). We've got one
23 issue is, whether or not a public entities committee could even
24 be formed at all. Is whether they have the power to appoint a
25 public entity to a creditors committee. And the other is,

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1 whether or not to, in fact, have a creditors committee ordered
2 to be formed in this case.

3 I think the first issue is kind of a gaining issue.
4 And it was really the issue that was focused more by the U.S.
5 Trustee. The other issue was focused on by the objectors.
6 Basically felt that there was no need for such a committee.

7 But I'd like to start first with what I'll call the
8 gating issue. That is whether or not the statute provides for
9 a creditors committee to be -- let me start over. Whether or
10 not a public entity municipality can be appointed as a member
11 of the creditors committee.

12 Reading from that letter of February 20 --

13 THE COURT: Well, not a member of the committee, but
14 as a committee.

15 MR. ESSERMAN: As a committee or a member of a
16 committee.

17 THE COURT: Well, I guess that's true. It's either
18 way.

19 MR. ESSERMAN: Yes. I mean, it --

20 THE COURT: Well, you know what, this -- but I think
21 1102 doesn't break it down per member. It talks about a
22 committee and persons. You know those are the -- key words.
23 You know what the key words are.

24 MR. ESSERMAN: Yes.

25 THE COURT: And we're on 101-39. Those are the key

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1 issues.

2 MR. ESSERMAN: That's correct. And to get back to the
3 letter, it says, "Although we do not reject or contest the
4 reasons you set forth in favor of the appointment of a public
5 entities committee, we've concluded the appointment of such a
6 committee would be outside the United States Trustees statutory
7 authority. Specifically, the public entity noted in your
8 letter are not eligible to serve on a committee under the
9 definition of persons found in 11USC101-41."

10 THE COURT: One of the things that I found kind of
11 hard to straighten out is the U.S. Trustee saying it's not
12 within their statutory authority. Is it within the Court's
13 authority?

14 MR. ESSERMAN: Well --

15 THE COURT: I mean, isn't that the same question?

16 MR. ESSERMAN: It --

17 THE COURT: Do I have the discretion to do it --

18 MR. ESSERMAN: I think I --

19 THE COURT: -- if you want me to?

20 MR. ESSERMAN: I think under 1102 you do. But even
21 more interesting, I think, is that the U.S. Trustee also does.
22 I think you do and the U.S. Trustee does. And what's
23 interesting is, yesterday or the day before, I got a call from
24 a public entity that is not represented by my crew. And he
25 said, it's very interesting that the U.S. Trustee is taking

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1 this position because they have appointed public entities
2 before. And that is the U.S. Trustee of this district. And I
3 said, oh, that's interesting. I said, what case was that? He
4 said, PG&E.

5 Evidentially -- and I pulled the petition --

6 THE COURT: You only have one committee on that case.
7 And I dis --

8 MR. ESSERMAN: There was only one committee.

9 THE COURT: And I disbanded the other committee.

10 MR. ESSERMAN: Correct. There was only one committee
11 and the City of Palo Alto was on that creditors committee.

12 THE COURT: But again, it's the member that's
13 distinguished from the committee itself. You're right. City
14 of Palo Alto was on that committee.

15 MR. ESSERMAN: Yes, as well as the State of Tennessee.

16 THE COURT: Well, I didn't remember that.

17 MR. ESSERMAN: Yeah. So there were public entities
18 actually appointed by the U.S. Trustee and their committee.
19 And of course, you've had other cases in which public entities
20 have been appointed to a committee.

21 So the question then becomes, if a public entity, in
22 fact, has been appointed by the U.S. Trustee and can serve, can
23 this Court under 1102 order such? And once again, on request
24 of a party in interest, the court may order the appointment of
25 additional committees or creditors or of equity security

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1 holders if necessary to secure adequate representative of
2 creditors or of equity security holders.

3 Well, public entity are creditors. They may not be
4 persons, but they are --

5 THE COURT: Yeah, but -- hold it. You can't read
6 1102(a)(2) without also reading 1102(b)(1) because (b)(1) says
7 a committee ordinarily consists of persons. Now you want to
8 focus on the word ordinarily --

9 MR. ESSERMAN: Correct.

10 THE COURT: -- and read it out of the statute.

11 MR. ESSERMAN: No.

12 THE COURT: But -- well --

13 MR. ESSERMAN: I want to read it in the statute.

14 THE COURT: Well, okay. But you agree that your
15 clients are not persons as the statute views?

16 MR. ESSERMAN: That's correct.

17 THE COURT: Leave aside what the U.S. Trustee thinks
18 they can or can't do. It falls in my court now.

19 MR. ESSERMAN: Right.

20 THE COURT: I have to decide, do I have the statutory
21 authority to appoint a public entity as a member of a
22 committee? Not appointed -- I'm sorry -- to appoint a
23 committee of public -- of members -- excuse me -- public
24 entities.

25 MR. ESSERMAN: That's right.

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1 THE COURT: There we go.

2 MR. ESSERMAN: And I think ordinarily is the key focus
3 of the statute. In this case, I'm not going to go into why
4 this is not ordinary because this case is extraordinary.

5 THE COURT: We can all agree, it's extraordinary.

6 MR. ESSERMAN: For many, many different reasons. So I
7 think ordinarily you would not appoint a public entity to a
8 creditors committee.

9 But in this case, I think this is one of the most
10 unusual cases ever. It's the sixth largest bankruptcy ever.
11 It's a case in which the public entity are uniquely affected
12 moreso than I think almost any case. And I don't want to put
13 them above any creditor, but they're very, very significant
14 issues, which I think we all sort of know about: the
15 destruction of a town of 26,000 --

16 THE COURT: Of course.

17 MR. ESSERMAN: -- a change in the culture of something
18 like the town of Paradise or in the counties or in the other.
19 And the focus of the effect and the devastating effect of the
20 PG&E wildfires in this particular case on the cities and
21 counties and special districts is so unique and so
22 extraordinary that I think it calls for a special recognition.

23 And the interesting thing is -- and this is also in
24 the motion -- is that the State Courts of California that
25 appointed representatives for the public entities --

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1 THE COURT: Oh, I know that.

2 MR. ESSERMAN: I know they're not dealing with the
3 statute.

4 THE COURT: Oh, I know that. I know.

5 MR. ESSERMAN: But those public entities have also
6 participated in some negotiations with this debtor.

7 THE COURT: And they still can.

8 MR. ESSERMAN: And they will.

9 THE COURT: And 503(b)(3) is not going to be cut out
10 of the statute --

11 MR. ESSERMAN: And I understand --

12 THE COURT: -- or clocked out of the DIP agreement.

13 MR. ESSERMAN: And I understand that.

14 THE COURT: It'll be subordinate to the DIP agreement.

15 MR. ESSERMAN: Yeah. And I understand that that's an
16 option.

17 THE COURT: Look, let's focus on me and not on the
18 U.S. Trustee.

19 MR. ESSERMAN: Okay.

20 THE COURT: I have to decide whether there's a
21 statutory basis to do it. I am sympathetic. I understand what
22 the creditors committee and the debtors said in their briefs,
23 but they didn't say anything about the legal analysis. To me,
24 I have to buy your argument that, somehow, I can take the word
25 ordinarily and put in there "in extraordinary cases" and then

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1 redefine the word person and do it in a way that's consistent
2 with the statute and intellectually honest. And it has nothing
3 to do with emotions and feelings and the sympathies --

4 MR. ESSERMAN: Of course.

5 THE COURT: -- that I have on a personal level for
6 your client. And it's an even tougher battle, as you can
7 imagine, since Congress changed the statute twice after that
8 and focused more specifically on who they're talking about as
9 persons.

10 So you want me to say that, in an extraordinary case,
11 I can direct a membership of a committee of people who the
12 statue says aren't persons. And that's the possible thing to
13 do intellectually, I think.

14 MR. ESSERMAN: Well, let me try and approach it a
15 little bit different.

16 THE COURT: Okay.

17 MR. ESSERMAN: Because that's how I look at it. The
18 way I look at it is, the creditors to be appointed under the
19 section shall ordinarily -- I look at it in a positive -- so
20 ordinarily --

21 THE COURT: Ordinarily what? Ordinarily persons?

22 MR. ESSERMAN: Ordinarily consists of persons. I
23 think that that's accurate. I do not --

24 THE COURT: Okay. But I'm agreeing with you in a
25 sense. That's what the statute says.

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1 MR. ESSERMAN: Okay.

2 THE COURT: So let's take extraordinary. The
3 committee and creditors in an extraordinary case shall consist
4 of fill-in-the-blank.

5 MR. ESSERMAN: Creditors. Of creditors.

6 THE COURT: Creditors.

7 MR. ESSERMAN: But -- but Congress twice went back and
8 made exceptions to who they were including within the
9 definitions of persons as governmental entities.

10 I didn't do it. You know they did it twice and for
11 reasons that have nothing to do with the legitimate arguments
12 that you're making. And they did it to make governmental
13 entities who act like creditors to be treated like creditors.

14 You know, the SBA loan or the loan guarantees or the
15 defaulted financial thing. But 41 does not include
16 governmental unit. Period.

17 MR. ESSERMAN: But in many cases, the things that you
18 just said are exactly what these public entities are.

19 THE COURT: I know, but none of them fit this case.
20 As sad as it is -- or as good as it is, with all the horrible
21 things that though your clients have suffered, none of them
22 have lost loan guarantees or whatever these other --

23 MR. ESSERMAN: No, they --

24 THE COURT: -- beneficial owners of assets.

25 MR. ESSERMAN: They've suffered devastating damages.

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1 THE COURT: Correct. I don't like what Congress made
2 the rules. How do I avoid the rules that they made? Plain
3 meaning.

4 MR. ESSERMAN: Well --

5 THE COURT: Give me a way to do it for you.

6 MR. ESSERMAN: I think once again, ordinarily is
7 defined by Merriam-Webster as "in the ordinary course of
8 events."

9 THE COURT: "Person" is what the change is here.

10 MR. ESSERMAN: Except ordinarily doesn't modify
11 persons. Ordinarily consists of the persons.

12 THE COURT: Well, or it could be ordinarily persons
13 who hold seven largest claim.

14 MR. ESSERMAN: Yeah.

15 THE COURT: But they said -- I mean, if you -- if it
16 just said, creditors who are creditors who have seven largest
17 claim. But because they talked about -- or the statute says
18 persons, and Congress twice told us more specifically, what
19 sub-class of entities are included within the definition. And
20 then said what isn't included? I mean, I think that's, as much
21 as anything else, when they amended 101, they said not only
22 what was included as person, but what is excluded.

23 So I can't even go to that exclusio unius -- or
24 whatever that Latin phrase is -- because it goes the other way
25 around. Does not include governmental unit except?

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1 MR. ESSERMAN: Except in certaining.

2 THE COURT: No, it doesn't say that. It says, except.
3 So you want me to focus on the word ordinarily in person?

4 MR. ESSERMAN: That's right.

5 THE COURT: And I mean, that's an awkward sentence. I
6 mean, why did they put in the willing to serve in there too? I
7 think it's the 13th Amendment, you can make someone serve on a
8 committee who isn't willing to serve. So Congress said, we're
9 going to have a committee of people willing to serve. But we
10 move past that, and then it says -- and it's ordinarily going
11 to be the top seven.

12 But the alternative construction is that, well, what
13 if you don't have the top seven? What if it's the next seven?
14 Can the U.S. Trustee or the court appoint creditors eight
15 through fourteen? The answer is yes. But ordinarily it's got
16 to be the top seven who are willing to serve.

17 Look, Mr. Esserman, I understand your point. You just
18 got to persuade me that I can ignore the statute and the
19 language. That's all so.

20 MR. ESSERMAN: Well, I'm doing a bad job so far.

21 THE COURT: No, you're not. You're not. You're not
22 doing a bad job. It's just I have to be faithful to the
23 statute, you know?

24 MR. ESSERMAN: No, and I agree with that. And I think
25 you should be. But I just think ordinarily is a much

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1 broader -- can be interpreted to be much more broad and can
2 include ordinarily persons.

3 THE COURT: Ordinarily consists of person, but in an
4 unordinary situation. Or -- or -- go beyond --

5 MR. ESSERMAN: No, it can include persons or
6 creditors.

7 THE COURT: -- persons. Non-persons.

8 MR. ESSERMAN: It can be creditors.

9 THE COURT: Well, but they divided the world into
10 persons and other. Because person includes the traditional
11 individual partnership corporation which therefore means LPs
12 and LLCs and all those other guys.

13 And maybe they had completely unrelated reasons why
14 they didn't want governmental entities acting as creditors.
15 But then somebody came along, I think -- well, Lion Capital, of
16 course, they had most the people were public entities. Right?
17 In Lion?

18 MR. ESSERMAN: Yes.

19 THE COURT: Well, most of the creditors were, so
20 they --

21 MR. ESSERMAN: Yeah.

22 THE COURT: -- had no option there. But when you have
23 loan guarantees and governmental entities acting like
24 traditional creditors, you can see why these other folks are in
25 there.

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1 Well, anyway, go ahead and make whatever additional
2 argument you want and reserve a few minutes if you want.

3 MR. ESSERMAN: Sure. You know, to me, this is where
4 the pivot of the issue is. Because I don't think anyone
5 seriously doubts the different aspects of the creditor group of
6 the public entities. The issues that are not just
7 reconstruction of damaged streets, roadways, pollution -- you
8 can go on -- schools, town, villages. But also safety issues
9 which are very key --

10 THE COURT: No, again, the litany is long and
11 persuasive. The U.S. Trustee only differs with you on the
12 legal point. The debtor and the other committee differ with
13 you on the discretionary. Do you want to address that issue as
14 well?

15 MR. ESSERMAN: Sure. To me, the issue on the
16 discretionary issue is several fold. One is, they focus on the
17 fact that the interest of the public entities are taken care of
18 by the unsecured creditors committee or the tort committee.

19 I think the focus of the public entities is completely
20 different from the tort committee or the unsecured creditors.
21 Once again, we're talking about the public entities being not-
22 for-profit people, not somebody it is looking to trade or a
23 financial aspect. They're safety concerns as well as economic
24 concerns. They're very concerned about their communities and
25 how to rebuild their communities. That's a very different type

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1 of analysis than a regular, unsecured creditor or even a tort
2 creditor -- an individual tort creditor who's concerned about a
3 recovery of their tort damage.

4 A city has a very, very broad-based view of how they
5 want to recover the city, the damaged goods. They're not
6 interested necessarily in how a individual, in fact, goes about
7 recovering their damages.

8 And the cities and public entities don't have the time
9 to do that anyway. They need to focus on the public entities.
10 We're talking about creditor groups that are -- have strained
11 resources. Everybody knows that their tax bases are down.
12 They're very overwhelmed to --

13 THE COURT: I know.

14 MR. ESSERMAN: -- to try and fix this problem. They
15 don't need to be either serving on another committee or
16 concerned with other issues. They need to focus on strictly
17 their issues, which are very different and very unique than the
18 general creditor body.

19 So I don't think that there's any way that they feel
20 taken care of by the unsecured creditors committee or the tort
21 committee who is really focused on a much different type of
22 damage.

23 Safety is paramount for the public entities. Recovery
24 of their claims is paramount also. But it's a combination.
25 They're also very concerned about maintaining that safety.

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1 They have a continuing interest in PG&E. They don't have just
2 an economic interest in getting a claim paid and they're done
3 with it.

4 Their interest is very long lasting for the life of
5 the communities, life of the county and the lives of the
6 cities. They're also very, very interested in getting this all
7 over with as fast as they can. Now, I know that's probably a
8 common theme and no one's going to say they're not interested.

9 But the cities are under tremendous stress. They're
10 under tremendous strain. And the sooner this is over, the
11 better off they are. So we think they're a unique entity.
12 They're different. We think that they're eligible to serve.
13 We think that it would be beneficial that they serve. And we
14 think you can read the statute to provide for a public entity
15 committee.

16 THE COURT: And let me -- since I -- it was important
17 to me to make sure we're faithful to the statute, do you
18 believe the statute would permit, under 1102(a)(4), to let the
19 court direct the U.S. Trustee to change -- or to add
20 governmental units to an existing committee?

21 MR. ESSERMAN: That --

22 THE COURT: Because the word "person", I don't think
23 the word "person" in (b)(1), first of all it talks about
24 creditors who were appointed. And then it talks -- that's
25 where persons are. But I don't think the word "appointed" --

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1 well, I beg your pardon. The word "appointed" does -- well,
2 wait one second. Let's try the next one.

3 Okay, the second sentence of 1102(a)(4) says the Court
4 may order the U.S. Trustee to increase the number of members of
5 a committee to -- well, that's to include a creditor of small
6 business. That doesn't do it. I'm looking to see if there is
7 a statutory construction that would allow a governmental entity
8 to get on a committee, even if it doesn't become a governmental
9 committee.

10 MR. ESSERMAN: And I get where you're going --

11 THE COURT: It may not be workable.

12 MR. ESSERMAN: I'm not so sure that the public
13 entities, at least initially, would be interested in that,
14 regardless. They don't want to be serving on a committee that
15 has duties that aren't strictly focused on the public entities.
16 They don't have the time to be involved in --

17 THE COURT: No, no, I can understand that.

18 MR. ESSERMAN: -- in certain things. So they want to
19 focus -- that's why they want -- number one, want their own
20 committee and number two, why they don't particularly have any
21 interest in serving on a --

22 THE COURT: Well, I think 1102(a)(2) doesn't give you
23 any wiggle room, because that is where a party -- the Court may
24 order the appointment of an additional committee.

25 MR. ESSERMAN: Yes.

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1 THE COURT: And that's where you're sent back down to
2 (b) (1), where you get into the ordinarily consist.

3 MR. ESSERMAN: That's right.

4 THE COURT: And we can all agree, there's probably not
5 a person in the room that would disagree that the PG&E fires
6 and this bankruptcy is not ordinary. But the question is, is
7 it a faithful interpretation of the statute to say "ordinarily"
8 refers to this, rather than the designees and that seven
9 largest, who are the ordinary ones? And that's the one that
10 seems to be more consistent with the definitions. But I -- the
11 U.S. Trustee isn't going to get ordered by me to appoint one of
12 your governmental units to the committee.

13 MR. ESSERMAN: No. And --

14 THE COURT: You don't -- we don't want it anyway.

15 MR. ESSERMAN: I was just going to say that. It's --

16 THE COURT: I got it.

17 MR. ESSERMAN: It's not -- that would probably do more
18 harm than good.

19 THE COURT: Okay.

20 MR. ESSERMAN: All right.

21 THE COURT: All right. Well, let's hear from the
22 committees. All right, Mr. Laffredi, are you going to speak up
23 on this one, too? Are you agreed with debtors' counsel on how
24 to share this?

25 MR. LAFFREDI: Your Honor, we had discussed this, that

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1 debtors' counsel was going to go first, but I don't --

2 THE COURT: Okay, well --

3 MR. KAROTKIN: You can go. If you want to go first --

4 MR. LAFFREDI: Sure. I can address the Court's
5 concerns with regard to the legal interpretation. And the U.S.
6 Trustee is sympathetic and understands the importance that the
7 public entities play in this case, obviously. But it really
8 does go down to an interpretation of the statute. The statute
9 is explicit --

10 THE COURT: Well, you laid it out very well in the
11 brief, a very nicely done brief. I appreciate your analysis.

12 MR. LAFFREDI: Well, thanks, Your Honor. There's not
13 really much else to add, other than the U.S. Trustee's
14 interpretation of the use of the word "ordinarily" would be
15 that it modifies not persons, but the seven largest claims,
16 because the whole point is to ensure adequate representation.
17 And sometimes the seven largest do not -- does not cooperate.

18 THE COURT: Well, of course. Right, they're not
19 willing to serve.

20 MR. LAFFREDI: Or willing to serve, exactly right. I
21 will --

22 THE COURT: If we appointed a committee that was
23 willing -- unwilling to serve, then you --

24 MR. LAFFREDI: Well, that's the solicitation process.
25 You get some who say they are not willing to serve, so they may

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1 not be considered.

2 THE COURT: Yeah, right.

3 MR. LAFFREDI: And with regard to the Court's comments
4 on Congress speaking to this several times, it has -- it's
5 spoken to this exact issue three times. First, when it enacted
6 the statute in '78.

7 THE COURT: Well, when it created the statute.

8 MR. LAFFREDI: Then, in 1984, 1994, when it amended.
9 And it could have added that municipalities were included. It
10 could have also not explicitly excluded them. But --

11 THE COURT: Yeah, it's that extra excluding that sort
12 of is the kiss of death, isn't it, or this theory, as you and I
13 both seem to be sympathetic.

14 MR. LAFFREDI: Exactly.

15 THE COURT: You know, I am and you said you are. So I
16 don't --

17 MR. LAFFREDI: Unfortunately, the statute is very
18 clear, we think. And public entities are not able to serve.

19 THE COURT: Yeah, it's that "does not include". Yeah,
20 I mean think about it. The statute -- the Congress could've
21 said the term "person" includes a governmental unit that
22 acquires an asset from a person, et cetera, et cetera, be ABC,
23 but they -- the Congress added this extra including and
24 excluding.

25 MR. LAFFREDI: Exactly. Or Congress could have

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1 changed 1102 and removed the word "persons" and changed -- and
2 just left it as --

3 THE COURT: Well, no, I understand. But I'm talking
4 about the --

5 MR. LAFFREDI: Right.

6 THE COURT: -- the simplest way was just a scribner's
7 (sic) error. Who knows? There's not a lot of legislative
8 history available on this.

9 MR. LAFFREDI: And we tried to include what there was
10 and the legislative history is that governmental entities are
11 explicitly excluded.

12 THE COURT: Right. Any more? Okay.

13 MR. LAFFREDI: Nothing more, Your Honor. Thank you.

14 THE COURT: All right. Thank you.

15 MR. KAROTKIN: Good afternoon, Your Honor. Stephen
16 Karotkin, Weil, Gotshal & Manges, for the debtors. I'll try to
17 be very brief, because Your Honor, I think that we've set out
18 our arguments in our pleadings, as has the creditors'
19 committee.

20 THE COURT: Right.

21 MR. KAROTKIN: We think the law is very clear that
22 under the circumstances that exist here, it's not appropriate
23 to appoint yet a third committee of creditors.

24 I know Mr. Esserman indicated that this case is
25 extraordinary and I think everyone agrees. But as to the issue

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1 of "person", it doesn't obviously allow you to ignore the words
2 of the statute. And I think the U.S. Trustee has addressed
3 that. As the case law sets out, Your Honor, the appointment of
4 another committee of creditors here is an extraordinary remedy.

5 And actually, what they're seeking, and I think what
6 Mr. Esserman made clear, they're seeking the appointment of
7 fourteen or sixteen members to a committee, his clients, to
8 represent themselves and nobody else. I think he made that
9 clear, that they want to represent themselves, sixteen people
10 who are party to this lawsuit.

11 THE COURT: But do you think that would fly? In other
12 words, what if we didn't have the statutory mix and I told Mr.
13 Laffredi, I think you can appoint a committee or I'll do it?
14 But I don't think it should be fourteen. It should be six or
15 seven. I mean, do you really think that those appointees would
16 not have a fiduciary duty to the -- any other governmental
17 entity?

18 MR. KAROTKIN: No, I -- no, I -- clearly they would
19 have a fiduciary duty. But we're talking about a very limited
20 universe of claimants here. And I think that's important to
21 keep in mind. The claims held -- again, despite what Mr.
22 Esserman said, the claims held by the public entities are not
23 unique. They are the same nature, priority of other unsecured
24 claims in this case.

25 The tort committee represents the holders of all tort-

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1 based claims, including his clients. And their sole remedy --
2 what they're seeking here, and again, it's very clear from the
3 pleadings -- they're seeking to recover money just like the
4 tort claimants are seeking to recover money, just like the
5 unsecured creditors represented --

6 THE COURT: Right.

7 MR. KAROTKIN: -- by the Milbank Firm are seeking to
8 recover money. There is nothing legally different from their
9 claims than the claims that are held by the constituents
10 represented by the already existing two committees.

11 THE COURT: Then why do we even have two committees?
12 Why even not just one committee?

13 MR. KAROTKIN: We could have had one committee.

14 THE COURT: Well, I mean, you -- I don't know what the
15 debtors' own view was. The U.S. Trustee chose to appoint two
16 and no one's questioned it, to my knowledge. So it's a done
17 deal, but --

18 MR. KAROTKIN: And I think even more importantly than
19 what I've already indicated, they cannot demonstrate -- and the
20 pleadings don't demonstrate -- again, there's no evidence in
21 the pleadings. This is Mr. Esserman's application. There's no
22 declaration supporting it. The only declaration he filed was
23 to shorten time. And they can't demonstrate that the public
24 entities are unable to represent their interests without the
25 status of an official committee. And that's what the law

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1 requires.

2 In fact, by their own admission, in their pleadings,
3 Your Honor, it's directly to the contrary. Their pleading --
4 pleadings clearly set forth they are well-organized. They are
5 well-coordinated. They participated as a coordinated group in
6 the pre-petition litigation. And they're certainly already
7 well-organized in participating in these cases. They're well-
8 represented in these cases. Three law firms signed this
9 motion, demonstrating they're well-represented.

10 And under these circumstances, again, Your Honor, I
11 think the law is very clear. Look, we don't dispute that these
12 entities suffered damage and we are sympathetic to the damages
13 that they suffered as a result of the wire -- wild fires. And
14 by no means do I mean to diminish that.

15 THE COURT: Does this all come down to money?

16 MR. KAROTKIN: Pardon me?

17 THE COURT: Does this all come down to money, of where
18 Mr. Esserman will get his fees?

19 MR. KAROTKIN: I -- to the extent he's got safety
20 concerns, again, they're well-represented.

21 THE COURT: Well, that's what I'm getting at. Is --
22 in your experience, what else is there to do to get official
23 committee status, but to get paid by the debtor? Beyond that,
24 what else happens? I mean, unofficial committees can act and
25 do a lot of these things.

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1 MR. KAROTKIN: Exactly. They -- the parties in the --

2 THE COURT: Well, the bonds -- we have on -- what four
3 unofficial committees in this case, right?

4 MR. KAROTKIN: Exactly.

5 THE COURT: Yeah.

6 MR. KAROTKIN: There are parties and interests under
7 1109. They can appear and be heard. They already appear and
8 be heard in these cases. They're very well-organized, as I
9 indicated. And the appropriate remedy here, Your Honor, is not
10 to appoint another -- yet another creditors' committee.

11 But the appropriate remedy is let them -- and I think
12 you indicated this -- let them function as an ad hoc committee.
13 Again, they're -- they've demonstrated they're perfectly
14 capable of doing that. And at the appropriate time, they can
15 file an application under Section 503(b) and the Court can
16 consider whether the estates should pay their fees.

17 THE COURT: Okay.

18 MR. KAROTKIN: Thank you.

19 THE COURT: Thank you. Mr. Kreller, are you coming
20 back for more?

21 MR. KRELLER: I am, Your Honor. Hopefully just a
22 little more, Your Honor. Thomas Kreller of Milbank, on behalf
23 of the Official Committee of Unsecured Creditors.

24 Your Honor, I'll be brief, as well. I think -- I
25 don't have a lot to add to what's in our papers. I think what

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1 I'd point out, Your Honor, this is -- this isn't a question of
2 whether the public entities will have an active voice in these
3 cases. They will. They have. They will. They will continue
4 to, I'm sure. And they should. They're obviously very
5 important stakeholders with a lot of interests in this company
6 and these cases.

7 The question on this motion is actually a much
8 narrower one. It's not one of whether they will have a voice.
9 It's whether or not they are adequately represented in their
10 creditor capacity by the two existing committees. Because when
11 you look at 1102, both (a)(1) and (a)(2), they talk about the
12 adequate representation of creditors or equity holders.

13 So I think implicit in that is the notion that the
14 capacity as creditor is important, when you think about what
15 does a committee do. A committee of creditors is there to
16 represent creditors qua creditors.

17 THE COURT: But there are different kinds of
18 creditors' committees in other cases. There have been
19 industry-type distinctions, right? I think back of a big case
20 one time involving a series of oil producers compared to other
21 creditors, or franchisees compared to other unsecured
22 creditors. So there are different kinds of unsecured creditors
23 that have different interests.

24 MR. KRELLER: There are different kinds of unsecured
25 creditors, Your Honor. And my committee --

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1 THE COURT: I mean, you have a -- your committee
2 consists of a winery and a tree cutting service and a few other
3 people.

4 MR. KRELLER: Your Honor, my committee, there are
5 three financial creditors.

6 THE COURT: Right.

7 MR. KRELLER: We have vendors. We have parties to
8 contract, including power purchase agreements.

9 THE COURT: Right.

10 MR. KRELLER: We have a union; we have the PBGC.

11 THE COURT: Right.

12 MR. KRELLER: So those creditors are -- and that
13 committee is intended to be a cross-section that is capable of
14 adequately representing the interests of unsecured creditors.

15 THE COURT: I guess what I'm -- what I'm-- what I'm
16 taking not issue, but I'm questioning whether your question
17 even their role as creditor. If Paradise hadn't been burned
18 and the fire had gone a different direction, they wouldn't be
19 here seeking creditor status, even though they are a creditor
20 in a technical sense, because they provide, you know, services
21 to the utility. But they are a creditor because Paradise
22 suffered the fire, right? They're a creditor who came
23 involuntarily as a victim of a fire. And this entity -- this
24 governmental entity was a victim of the fire.

25 MR. KRELLER: Yes.

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1 THE COURT: Just like individuals or homeowners who
2 were victims of the fire.

3 MR. KRELLER: Correct, Your Honor. And I'm not
4 denying that they're creditors.

5 THE COURT: Right, okay.

6 MR. KRELLER: But I think where this comes into play
7 and it comes out, as Mr. Esserman argues to you, that, in fact,
8 the interests that they are seeking to protect and vindicate,
9 they have interests as creditors. But they also have interests
10 in safety and health and welfare and regulatory issues, too.

11 Those kinds of issues aren't really creditor issues.
12 They're entirely legitimate issues, but they're not the kind of
13 creditor issues that I think 1102 contemplates. And we've
14 seen, in Mr. Esserman's pleadings and in his argument today,
15 how actively involved they've been in administrative
16 proceedings before the CPUC and state court prepetition
17 litigation. They represent those interests in other forums
18 without the need of an official committee in the bankruptcy
19 case. The bankruptcy case is, at least primarily, about the
20 debtor-creditor relationships.

21 And yet, Mr. Esserman is arguing that they have other
22 interests that they want this official committee to form. And
23 I think that actually falls outside of what 1102 is about. But
24 again, I don't want to leave the impression that somehow they
25 don't have a voice in these cases.

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1 THE COURT: No, no, you haven't. You haven't --

2 MR. KRELLER: They do.

3 THE COURT: -- said that. I guess what I'm having
4 trouble is understanding what -- and again, we use Paradise as
5 the city that, perhaps the worst damaged victim of all, is what
6 about them isn't a creditor? The fact that they want their
7 parks and roadways and facilities restored doesn't mean they
8 aren't a creditor for that reason.

9 And if the public -- if PG&E handed over a check and
10 said, here, fix everything, then they wouldn't be a creditor
11 anymore. But the fact that they would have an ongoing
12 relationship doesn't mean their interests aren't unique or
13 important, but that they'd stop being a creditor, so -- right?

14 MR. KRELLER: They would -- but Your Honor -- and Your
15 Honor, but that's -- in their -- I think that's what's in play,
16 here. They have a creditor hat and then they have a public
17 entity hat. And as creditors, if they were otherwise -- if
18 they were persons and creditors, they would be entitled to sit
19 on an official committee of creditors.

20 That's not really what they're seeking. They're
21 seeking to sit on an official committee of public entities
22 because they don't believe they're public entity interests are
23 being served. And so, they're kind of crossing the line and
24 trying to get an official committee, when I think the way 1102
25 reads and works, the official committees of creditors and

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1 equity holders really are about the debtor-creditor
2 relationship.

3 THE COURT: Well, I've talked about my colleague
4 upstairs and he's been in the news for wanting to have PG&E
5 change some of its wildlife -- or wildfire management risks or
6 foresting risks. So are you a creditor if you're ordered to
7 cut down trees? Or are you not? In other words, your
8 constituents are creditors. The victims, or the city of
9 Paradise, as a victim, is a creditor. But it still has an
10 interest in something else. But doesn't make them not a
11 creditor.

12 MR. KRELLER: Agreed.

13 THE COURT: So --

14 MR. KRELLER: Agreed, Your Honor. But as creditor,
15 I -- as creditor, they are represented, either by my committee,
16 as a general unsecured creditor matter, or by the tort
17 committee as a tort victim matter. So I think their creditor
18 capacity is covered by the two existing official committees.

19 THE COURT: Okay. So what you're saying is that a
20 governmental unit that cares about the future, the parks, the
21 trees, the vegetation management, they're not wearing a
22 creditor hat in that role?

23 MR. KRELLER: That's right --

24 THE COURT: If the utility comes in and says we'll fix
25 all the fire damage, we'll restore all the harm you suffered,

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1 but as far as what it takes for the future, that's a different
2 relationship.

3 MR. KRELLER: I think that's right, Your Honor.

4 THE COURT: Okay.

5 MR. KRELLER: I think that's right. And I think you
6 can -- and when you have the public entities show up and tell
7 you that this isn't just about their creditor role, they're
8 ignoring that dichotomy.

9 THE COURT: Okay. I gotcha.

10 MR. KRELLER: And I think as creditors, they are
11 represented by either my committee or Ms. Dumas' committee.
12 And Your Honor, the last point, and this is somewhat
13 duplicative of Mr. Karotkin, but I think to some degree, the
14 issue with this motion is another official committee here is
15 just the wrong tool for the job. The remedy is a substantial
16 contribution claim.

17 If they come in in their very legitimate capacity, as
18 public entities, with all of the interests -- important
19 interests that they have and they make a substantial
20 contribution to the reorganization cases, then they'll be able
21 to prove up that case. You'll be able to allow -- to grant
22 them a substantial contribution claim. And they'll be
23 compensated and have their costs covered that way.

24 THE COURT: Well, I'm not sure I agree with you there,
25 because all the people that get paid under 502 -- 503(b) --

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1 502(b)(3) are creditors. Creditor files a petition, creditor
2 recovers, creditors come under defense, creditor who makes a
3 substantial contribution. But you have to be doing it as a
4 creditor. If somebody, just for the fun of it, says I think
5 I'll pay for something for the debtor, that's probably not a
6 creditor.

7 MR. KRELLER: Yeah, again, Your Honor, I'm not denying
8 that they're creditors.

9 THE COURT: Yeah, yeah.

10 MR. KRELLER: They certainly are. I think, though,
11 you have to recognize the dichotomy between what --

12 THE COURT: No, no, I understand. I'm focusing on
13 something different. If Mr. Esserman's clients don't get a
14 committee here and they go out and they do something that they
15 think creates a substantial benefit to the utility, but their
16 question is that they didn't do it in their creditor capacity,
17 they might not have a 502(b)(3) claim, because the persons who
18 make those contributions are creditors.

19 So that I'm a creditor of XYZ Company and I go recover
20 a preference. So I've done something for the good of the
21 creditor body, so I'm a creditor who can get paid. Or I'm a
22 committee of an unofficial committee that proposed the plan.
23 But if I do something that is non-creditor-related, it may not
24 be compensable. Again, we can cross that bridge some day in
25 the future.

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1 MR. KRELLER: Understood, Your Honor. But I think
2 that's probably a closer fit to what would be an appropriate
3 remedy for that --

4 THE COURT: Okay.

5 MR. KRELLER: -- in this context --

6 THE COURT: Okay.

7 MR. KRELLER: -- rather than an official committee
8 where they've basically said they're not -- they've basically
9 told you we don't want to sit on an official unsecured
10 creditors committee, because we don't want to owe duties to
11 other unsecured creditors who are not like us. And I think
12 that's -- kind of really gets to the -- of the problem. It's a
13 bit of a contradiction, Your Honor.

14 THE COURT: Okay. Thank you, Mr. Kreller.

15 MR. KRELLER: Thank you.

16 THE COURT: Mr. Esserman, closing comment? We've got
17 everybody. We know -- you're alone on this one, right?

18 MR. ESSERMAN: Yeah, I don't have a horde with me.
19 Let me just address a couple issues. I think you heard
20 precisely why we don't want to be a member of the unsecured
21 creditors committee and why they do not represent us,
22 regardless of what they said. They said they represented us in
23 our creditor capacity.

24 The issues of safety and being a creditor are
25 inextricably intertwined between the two -- between the two.

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1 We do not -- we cannot ignore one. We cannot ignore the other.
2 The cities have to be -- counties have to be rebuilt, but they
3 have to be rebuilt with safety issues.

4 The debtor is very clear that they need two -- two
5 fixes to this bankruptcy. One, they need some legislative
6 assistance and legislative help. And two, they need to corner
7 the -- get resolved the issue -- the creditor issues: one is
8 creditor, one is legislative. It's a legislative issue, a
9 creditor-related issue. I would contend that it's similar to a
10 safety issue. They are inextricably intertwined.

11 THE COURT: Well, is it let's be -- oversimplify.
12 Something that's in the news a lot is undergrounding. So
13 suppose Paradise suffers the damage that it suffered and its
14 managers say going forward, we want all the utilities
15 undergrounded. Now that's not -- that's a safety issue. But
16 it isn't fixing a creditor issue.

17 In other words, if PG&E fixes Paradise's damages
18 that -- fire losses and bridges and all the other things, but
19 then Paradise says, but we want the utilities undergrounded,
20 again, leaving aside whether PUC or anybody else would have
21 something to say and just focusing on the narrowness of the
22 agency wants its power lines underground, so there isn't
23 another fire in the future. That, to me, is not a -- that's a
24 safety issue, but it's not a creditor issue.

25 MR. ESSERMAN: Well, it --

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1 THE COURT: And it's not something that the creditors'
2 committee or a group of creditors should be insisting that the
3 utility do something going forward.

4 MR. ESSERMAN: Except --

5 THE COURT: It may be a good policy, but --

6 MR. ESSERMAN: Except for one thing, Your Honor. If
7 this company is going to reorganize and be successful and get
8 out of bankruptcy and be a proper corporate citizen and serve
9 the communities of California, they're going to have to deal
10 with all the issues, not just paying off this or that. They're
11 going to have to deal with the safety issues, with the --

12 THE COURT: That's right. I agree.

13 MR. ESSERMAN: -- with the regulatory issues. You're
14 going to see PG&E go before the state legislature at some time.

15 THE COURT: Of course.

16 MR. ESSERMAN: You're going to see them go before the
17 CPUC. It's not going to be necessarily, well, we need this to
18 pay creditors, although it will be --

19 THE COURT: But that's the point --

20 MR. ESSERMAN: But they will be inextricably
21 intertwined.

22 THE COURT: And they will go before the city council
23 of Paradise if they need a permit to do something. But if the
24 city of Paradise says, you have to underground your utilities,
25 that's a different issue. You're -- the city of Paradise is

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1 perfectly entitled to insist on that. The question is whether
2 it's a creditor function.

3 And I guess I'm oversimplifying. I don't want to
4 minimize the damage to your client. But to me, it's a
5 difference between fixing the creditor problem and fixing the
6 safety, going forward future relationship problem. Listen, it
7 has nothing to do with what you and I are debating. I have
8 to -- I still have to decide can you get in the door from the
9 statute and, you know, that's a different question.

10 MR. ESSERMAN: I just wanted to correct the issue as
11 to somehow the public entities be represented in a creditor
12 capacity by the unsecured creditors committee or existing
13 committee. We just take a very different view.

14 THE COURT: Okay. I understand.

15 MR. ESSERMAN: Thank you.

16 THE COURT: I don't -- Mr. Esserman, I'm going to make
17 a ruling here. I probably won't surprise you. I just -- I
18 don't think that I can ignore the amendments to Section 101
19 and, as Mr. Laffredi pointed out -- and so I'm not -- I've
20 expressed at a personal level where I think it's -- I'm sorry
21 that I can't afford you and your clients what they want here.

22 If I made the decision that I can fit the matter into
23 the statute, I'd deal with the second question of, well, do we
24 need a third committee, et cetera, et cetera? I'm going to
25 take the narrow response, because I think it's -- my job is to

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1 interpret the statute the U.S. Trustee did it, too. And we
2 didn't rehearse. I read his brief. I also read the statute.
3 I read some of the other letters here on the subject.

4 I puzzled with it in my mind from -- you know, I told
5 Ms. Dumas about using the passive voice. Now I'm having
6 discussions from my high school English class about when you
7 have consisting of an ordinarily and does "person" modify
8 largest creditors or something else? I just can't read it the
9 way you want me to read it, unless I just pretend that I'm
10 reading something else. And I -- 1102(b) alone, maybe I could
11 get there. But I can't read 1101.39 out of the statute either,
12 particularly with the history.

13 So for those reasons, I am going to deny your motion.
14 I said 101.41 (sic), not 39. I'm going to deny the motion for
15 those reasons. That is the reason that I don't believe from
16 the statutory point of view there is any authority for the
17 Court to authorize an appointment of governmental units as a
18 separate committee. So I appreciate your time and effort and
19 your energy on behalf of your client. They're well-served.
20 And I appreciate all sides on their -- this argument.

21 But that'll be the end. I guess, Mr. Laffredi, is it
22 in your bailiwick to do a simple form of order?

23 MR. LAFFREDI: I can do that.

24 THE COURT: And if there's an appeal, why don't we
25 just follow the traditional rules? Serve it on Mr. Esserman

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1 and just -- it's perfectly fine with me if you say for the
2 reasons stated on the record, the motion is denied. Everybody
3 in the case will have the official record or the unofficial
4 record, so they know what my thinking is. Okay?

5 MR. LAFFREDI: Will do, Your Honor.

6 THE COURT: Thank you very much. All right, thank you
7 everyone, for your time. I think we'll conclude the hearing
8 for the day.

9 (Whereupon these proceedings were concluded at 2:23 PM)

I N D E X

RULINGS:

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Motion Denied

179 14

C E R T I F I C A T I O N

I, Kandi Gaffney, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ KANDI GAFFNEY

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Date: March 14, 2019

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